Federal Court  Cour fédérale

Date: 20230922

Docket: IMM-7685-22

Citation: 2023 FC 1279

Ottawa, Ontario, September 22, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

ASHOK KUMAR
SAMEER KUMAR GILL
MANJEET KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ashok Kumar and his family seek refugee protection in Canada, claiming Mr. Kumar is at risk from the police in Punjab, India. A number of years ago, Mr. Kumar, a car dealer, sold a car to another dealer but the change in title to the car was not registered. When the car was later found at the scene of a murder, the police believed Mr. Kumar knew the perpetrators. They

arrested him, interrogated and tortured him into confessing, and only released him on payment of a bribe and the condition that he report to the police station when called upon to do so.

[2] In a decision dated July 18, 2022, the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] concluded the family could safely and reasonably seek refuge in Mumbai. The existence of such an internal flight alternative [IFA] means the family does not meet the definition of Convention refugee under section 96 or of persons in need of protection under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The family now seeks judicial review of the RAD's decision, arguing that it was unreasonable.

[3] For the reasons set out below, I conclude the RAD's decision was reasonable. The applicants have not shown that the RAD failed to consider material evidence, or that it was unreasonable for the RAD not to have referred to another RAD decision that reached different conclusions on the country condition evidence.

[4] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[5] The parties agree, as do I, that the RAD's decision is reviewable on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32. A reasonable decision is one that is internally coherent, based on a rational chain of analysis, and

justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. In reviewing a decision on the reasonableness standard, the Court does not reassess or reweigh evidence to come to a new decision. Rather, it can only set aside the decision 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.

[6] The applicants contend that the RAD's finding that they had an IFA in Mumbai was unreasonable. In doing so, they raise the following two issues:

A. Did the RAD unreasonably fail to consider the entirety of the evidence before it?

B. Did the RAD unreasonably fail to refer to another decision of the RAD that concluded that the Punjab police had the means to locate a person of interest throughout India?

[7] In their written submissions, the applicants also argued the RAD unreasonably failed to refer to the most recent version of the national documentation package [NDP] for India published by the IRB. At the hearing, they withdrew this argument, recognizing that there were no relevant and material differences between the versions of the NDP.

III. Analysis

A. *The RAD did not unreasonably fail to consider the entirety of the evidence*

[8] The RAD set out the established two-pronged test for determining whether a refugee claimant has an IFA within their own country: (1) whether, on a balance of probabilities, there is no serious possibility the claimant would be persecuted or face a risk described in section 97 of

the *IRPA* in the IFA; and (2) whether it would be reasonable in all the circumstances, including those particular to the claimant, for them to seek refuge there: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at pp 709–710; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at pp 595–597.

[9] In assessing the first prong, the RAD considered whether the applicants would continue to be at risk from the Punjab police if they moved to Mumbai. It concluded they would not be, as the Punjab police did not have the motivation to pursue the applicants to Mumbai and did not, in any case, have the means to locate them in Mumbai. On the question of motivation, the RAD found there was no evidence the Punjab police had continued to target members of the applicants' family, including family members who remained in the applicants' hometown, in the past three years, despite Mr. Kumar's failure to comply with police conditions. It therefore found the applicants had not established that the police were motivated to pursue them to Mumbai, so there was no serious possibility of persecution or risk of harm there.

[10] On the question of means, the RAD considered the objective evidence contained in the NDP issued by the IRB relating to India's Crime and Criminal Tracking Network and Systems [CCTNS], its tenant verification system, and its Aadhaar system. It agreed with the Refugee Protection Division that the Punjab police could not use these methods to locate the applicants since Mr. Kumar's name would not have been entered into any police databases after his unlawful detention, the evidence showed little inter-state police communication, and Aadhaar data is not shared with criminal investigation agencies. The RAD also concluded the applicants would not be located through family members, as there was no evidence the police had

questioned their relatives who had remained in Punjab. The RAD reviewed another decision by the RAD that the applicants had raised in their submissions, and concluded that the facts in the decision were different from those of the applicants' case.

[11] On the second prong of the IFA test, the RAD concluded it would be reasonable for the applicants to relocate to Mumbai. The applicants do not challenge that finding on this application for judicial review.

[12] The applicants argue that the fact that the Punjab police have not sought to locate them is insufficient to conclude they are not motivated to find them. They argue that Mr. Kumar being arrested, detained, fingerprinted, and photographed by the police itself demonstrates an interest and motivation to locate him, even if no official charges were issued against him, particularly given the context of the murder investigation that led to his arrest. However, the RAD expressly considered the context and the police's past actions in its assessment. I agree with the Minister that the applicants' argument on this front essentially asks the Court to reach a different conclusion on the evidence, rather than demonstrating how the RAD's conclusion was unreasonable. This is not a basis to set aside a decision on judicial review: *Vavilov* at paras 100, 125–126.

[13] The applicants also point to elements of the NDP regarding police detention of individuals and the current, expanded scope of the CCTNS, which now includes fingerprints and other information. They note that Mr. Kumar was fingerprinted at the police station, suggesting that he could therefore be located through his fingerprints in the CCTNS or in the Aadhaar

system. However, the RAD found as a fact, based on evidence in the NDP, that since Mr. Kumar was unlawfully detained, the Punjab police would not have entered his name into the CCTNS. The applicants' suggestion that the police would have nonetheless entered his fingerprints into the CCTNS is contrary to the RAD's finding and illogical in light of it. Nor is it fair to criticize the RAD for failing to refer to the question of fingerprints in particular when the applicants did not raise this argument in their submissions to the RAD.

[14] The RAD reasonably addressed the evidence in the record and the arguments and evidence raised by the applicants. I am not satisfied the applicants have shown the RAD's decision to be unreasonable through reference to other additional passages in the NDP that they now argue could lead to a different conclusion.

B. *The RAD did not unreasonably fail to refer to its own jurisprudence*

[15] The applicants refer to a decision of the RAD dated June 10, 2022 (RAD File No. TC2-05747) involving another refugee claimant fleeing police in Punjab. In that decision, another RAD member concluded that the fact that the appellant was fingerprinted, photographed, and suspected of being pro-Khalistan meant it was reasonably likely that his name and biodata were in the police database, and that this gave the police the means to locate him throughout India. The RAD in that case also concluded that the police had the motivation to locate the appellant, as evidenced by them arresting and detaining him, later calling him in to the police station, and continuing to visit his family home.

[16] The foregoing decision was released between the date on which the applicants filed their written submissions and the date of the RAD's decision in the applicants' case. The applicants therefore did not refer to the decision in their written submissions. Nor did they, upon becoming aware of the decision—which does not appear to have been posted by the RAD on its website as "Reasons of interest" or published by the RAD so as to be available on CanLII—request to file supplementary submissions to draw the decision to the attention of the member hearing their appeal. However, they argue in this Court that it was unreasonable for the RAD to have come to different conclusions regarding means and motivation or, at least, to have failed to address the other decision and explain why it was reaching different conclusions.

[17] I cannot agree, for several reasons.

[18] First, contrary to the applicants' submissions, the applicants in this case are not in "identical circumstances" to those in RAD File No. TC2-05747. As the Minister points out, the appellant in the other decision was suspected of pro-Khalistan militancy, a fact the RAD relied on in its conclusions. The RAD in that case also referred to the ongoing visits to the family as evidence of the police's motivation to locate the appellant. The RAD in the present case considered the absence of such visits as indicating a lack of motivation.

[19] Second, and in any event, even if the facts were identical, an administrative tribunal reaching conflicting or contrary decisions is not, of itself, a ground for judicial review: *Singh v Canada (Citizenship and Immigration)*, 2018 FC 561 at para 4, citing *Domtar Inc v Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 SCR 756 and *Wilson v*

Atomic Energy of Canada Ltd, 2016 SCC 29. As the Supreme Court noted in *Vavilov*, both administrative decision makers and reviewing courts must be concerned with the general consistency of administrative decisions, and those affected by them—like the applicants—are entitled to expect that like cases will generally be treated alike: *Vavilov* at para 129. Nonetheless, a lack of unanimity is a by-product of decision-making freedom and independence, and the existence of conflict does not, in itself, threaten the rule of law: *Vavilov* at para 129. The standard of reasonableness inherently recognizes that conflicting, and even diametrically opposed, administrative decisions may potentially each be found reasonable, even on questions of law: *Jam Industries Ltd v Canada (Border Services Agency)*, 2007 FCA 210 at para 20.

[20] Third, as the Supreme Court makes clear in *Vavilov*, the administrative context is important: *Vavilov* at paras 88–91. The RAD is a tribunal with over a hundred members, who decide thousands of cases a year. From a practical perspective, it is effectively impossible for each member of the RAD to be aware of every decision issued by every other member. It is unrealistic to impose on the RAD, as the applicants propose, an obligation to be aware of all of its other decisions, let alone cite them or distinguish them, particularly in a case where they have not been raised.

[21] *Vavilov* recognizes that consistency with an administrative body's past decisions is a "constraint" to be considered in assessing reasonableness: *Vavilov* at para 131. However, the Supreme Court was clear that the "justificatory burden" on a decision maker to explain its departure from prior decisions arises where the departure is from "longstanding practices or established internal authority": *Vavilov* at para 131. There is no indication that the decision in

RAD File No. TC2-05747 meets this description. As the Minister points out, numerous decisions of the RAD have reached conclusions similar to those in the current case regarding means and motivation of the Punjab police, based on similar facts and the same NDP, which findings have been upheld by this Court: *Singh v Canada (Citizenship and Immigration)*, 2021 FC 459 at paras 19–22; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 1445 at para 43; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 34; *Singh Sidhu v Canada (Citizenship and Immigration)*, 2020 FC 191 at paras 26–29; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 510 at para 30. This is not to say that these decisions reflect a "correct," or the only reasonable, outcome or conclusion. Rather, it is simply to say that the decision in RAD File No. TC2-05747 has not been shown to be an "established internal authority" of a nature such that it was unreasonable for the RAD not to consider it in this case.

[22] The RAD's appraisal of the evidence and facts of each refugee case will be central to its determination of the existence of an IFA. While consistency is an important concern, particularly in areas such as assessment of the objective evidence in the NDP, this does not mean that a RAD decision will be found unreasonable simply because an applicant can point to a contrary result in a different decision.

IV. Conclusion

[23] As the applicants have not demonstrated that the RAD's decision was unreasonable, the application for judicial review is dismissed.

[24] Neither party proposed a question for certification as a serious question of general importance. I agree that no such question arises in the matter.

JUDGMENT IN IMM-7685-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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