

Federal Court



Cour fédérale

**Date: 20230926**

**Docket: IMM-9429-22**

**Citation: 2023 FC 1296**

**Ottawa, Ontario, September 26, 2023**

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

**BETWEEN:**

**SHAFIA NAZIR  
KINZA NADEEM  
JAVERIA NADEEM  
MOHAMMAD OBIADURRAHMAN MEHAR  
TAMEEM ABDULRAHMAN MEHAR**

**Applicants**

**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 August 31, 2022 finding the that the Applicants are not Convention refugees

pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2002, c 27 [IRPA] nor persons in need of protection pursuant to section 97 of IRPA.

[2] The Applicants are citizens of Pakistan. The Applicants fear an organization named Sipah-e-Sahaba Pakistan [SSP], a Sunni fundamentalist organization known for targeting Shia Muslims. The RAD dismissed their application because there is a viable Internal Flight Alternative [IFA] in Pakistan.

[3] The Applicants seek judicial review of that RAD decision. Having considered the record before the Court, including the parties' written and oral submissions, and the applicable law, the Applicants have failed to discharge their burden to demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

## II. Factual Background

[4] The Applicants are 41-year old Shafia Nazir [Ms. Nazir] and her children, 17-year old Kinza Nadeem, 16-year old Javeria Nadeem, 13-year old Mohammad Obiadurrahman Mehar, and 11-year old Tameem Abdulrahman Mehar.

[5] The Applicants lived as temporary residents in Bahrain and the United Arab Emirates [UAE] through Ms. Nazir's husband's work permit.

[6] Ms. Nazir is a member of the Shia sect of Islam, making her a target of Sunni fundamentalists in Pakistan and fanatics in Bahrain. In February 2019, Ms. Nazir started holding

monthly Shia majilis (religious gatherings) in her home in Bahrain. She reports facing increased threats once she became a more active and visible Shia Muslim.

[7] In September 2019, Ms. Nazir returned to Pakistan to complete her examinations and coursework for a Bachelor of Education program. During this time, she began to receive telephone calls demanding extortion from the SSP. The SSP members knew Ms. Nazir was Shia, lived in Bahrain, and demanded 50 lakh rupees from her. In fear, Ms. Nazir went back to Bahrain and was not able to complete her university coursework or degree.

[8] Around November 2019, Ms. Nazir reports that her husband was approached by Arab fanatics, known to persecute Shia Muslims, pressuring to terminate his employment in Bahrain. Her husband was given until February 2020 to leave which resulted in the loss of his work permit in Bahrain.

[9] The Applicants are afraid to return to Pakistan. Ms. Nazir believes that the SSP, who has a strong network across Pakistan, will attempt to extort her family, file some religious motivated case against them, or even kidnap her children to hold them ransom.

[10] On December 16, 2019, the Applicants travelled to the United States [US] with visitor visas. On December 20, 2019, the Applicants came to the Canadian border and made their refugee claim.

[11] On March 22, 2022 after a virtual hearing, the Refugee Protection Division [RPD] determined that the Applicants were not Convention refugees or persons in need of protection. The determinative issue was the availability of an IFA to Hyderabad in Pakistan. On August 31, 2022, the RAD agreed with the RPD. The Applicants are not refugees or persons in need of protection under sections 96 and 97 of the IRPA.

### III. Decision Under Review

[12] On the first prong of the IFA test, the RAD, relying on the National Documentation Package for Pakistan [NDP], found that the SSP was not dominant in Hyderabad. According to the RAD, there was no evidence that another anti-Shia extremist group was aware of the Applicants' existence, that the SSP had shared its information with another group, or that there is any motivation by SSP to pursue the Applicants given their low-profile status in Pakistan.

[13] The RAD cited the NDP and found that the SSP was banned in Pakistan, but was linked to Ahle Sunnat Wal Jamaat [ASWJ], the Lashkar-e-Jhangvi [LeJ], and the Tehreek-e-Taliban Pakistan [TTP]. However, the RAD held that even if the SSP was connected, the NDP did not, when read in context, provide support for the Applicant's arguments that no viable IFA existed anywhere in Pakistan.

[14] Relying on the NDP, the RAD concluded that the extremist groups do not have a strong presence in Sindh, outside of Karachi, and specifically not a strong presence in Hyderabad which is in southern Sindh (NDP item 1.13, 7.30, 12.33). Finally, the RAD states that "objective evidence indicates Hyderabad is very accepting of minorities" (NDP item 12.40).

[15] The RAD then analyzed the Applicants' submission that based on the objective evidence, militant groups have a wide geographic reach. The RAD concluded that the same objective evidence noted that this evidence applies to persons that are targeted such as those accused of blasphemy, which is not the case of the Applicants.

[16] Indeed, the RAD considered the objective evidence that there are incidents where Shias are a target for violence and that there is sectarian violence, but the RAD concluded that there was little objective evidence to establish that extremist groups target low-profile Shia individuals for targeted attacks. In the specific case of the Applicants, the RAD held that no evidence was provided to establish that they have a sufficiently high profile that would motivate the SSP or other extremist groups to continue to locate them in Hyderabad or target them owing to their Shia faith. The RAD found that there is no evidence that the Applicants are specifically targeted by the militant groups so as to establish an on-going motivation to pursue the Applicants three years after they were threatened over the telephone. The RAD found that the Applicants have not received any threats since they have left.

[17] The RAD finally concluded that the militant groups would not be able to find the Applicants because of the residential tenancy registration system in Pakistan. There was no evidence that the Applicants were involved in criminal activity or have charges or warrants against them. The evidence demonstrates that when the police communicates in relation to residential tenancies, it is usually in high profile cases (NDP item 3.18). While there is corruption in the Pakistani police, the RAD found that the Applicants had not established that the SSP or any other group have the influence to conspire with the police to pursue them.

[18] In the end, the RAD found that the Applicant had not provided sufficient credible and trustworthy evidence to establish, on a balance of probabilities, that they faced a serious possibility of persecution in Hyderabad. The RAD concluded that the NDP provides evidence that the Applicants, as Shia Muslims, can relocate to Hyderabad without facing a serious risk of harm due to their practice of religion.

[19] On the second prong of the IFA test, the RAD found that the Applicants have not shown, on a balance of probabilities, that the IFA is objectively unreasonable. The RAD's reasons consider the circumstances of anti-Shia threat, employment prospects, and relocation issues. The RAD found that Shia Muslims face moderate risk of sectarian violence in Pakistan and that the NDP indicates that the situation is improving and sectarian violence is decreasing. The RAD also found a lack of systemic discrimination against Shia Muslims and rather held that they were well represented in public and private sectors and elections. The RAD also noted that the NDP shows that Shia Muslims are generally able to establish places of worship and practice their religion without overt state interference.

[20] In addition, the RAD found that Ms. Nazir has a university master's degree, job experience in Bahrain and Canada, and can speak Urdu, Punjabi, and English, making her well positioned to find employment with her husband. The RAD also found no evidence that would make it hard for the Applicants to relocate, such as mental health or medical issues.

IV. Issues and Standard of Review

[21] The sole issue in this judicial review is whether the RAD reasonably held that there was a viable IFA in Hyderabad.

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

V. Analysis

A. *The RAD reasonably held that there is a viable IFA in Hyderabad*

[23] The test to determine if an IFA is viable in the claimant’s country is set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA) at paragraph 10. The test is two-pronged: the claimant has an IFA when (1) they will not be subject to a serious possibility of persecution nor to a risk of harm under subsection 97(1) 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 must be satisfied in order to make a finding that a claimant has an IFA

*(Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 597-598). It is the applicant who bears the burden of demonstrating that the proposed IFAs are not viable.

[24] The Applicants do not make specific submissions on the second prong of this test in their Memorandum of Argument. The Applicants submit that only the first prong of the test is impugned in this case.

[25] The Applicants submit that the RAD did not adequately consider the objective evidence and implicitly reasoned that the SSP or anti-Shia terrorist groups would not be motivated to find the Applicants. The Applicants point to the NDP documents establishing that Shia Muslims still face threats from militant groups like SSP, TTP and LeJ and that in 2018 there were 41 persons killed in Shia-targeted attacks, including at Shia religious gatherings.

[26] The Applicants point out that the RAD erred by speculating on the motivation of the SSP by requiring that the Applicants be of a 'higher' profile on a socioeconomic basis, which is not necessarily relevant when the SSP is known to target based on religious grounds. Relying on *Londono Soto v Canada (Minister of Citizenship and Immigration)*, 2008 FC 354 at paragraph 26 [Londono] and *Builes v Canada (Minister of Citizenship and Immigration)*, 2016 FC 215 at paragraph 17 [Builes], the Applicants submit that the RAD erred in speculating on the militant group's motivation without any basis on the motivations of agents of persecution.



[27] The Applicants also argue that the RAD accepted the evidence that people with a higher profile, such as Shia professionals, officials, doctors, lawyers, politicians, prominent business people and local traders were more at risk. However, the Applicants submit that the RAD erroneously held that the Applicants had not presented sufficient evidence that they were of sufficiently high profile so as to motivate the SSP or other extremist groups to locate them.

[28] The Applicants further argue that the RAD's finding that the Applicants could have a significant degree of anonymity among 17 to 26 million Shia Muslims in Pakistan fails to recognize, notwithstanding the size of the population, the Applicants have personally been targeted by the SSP based on their Shia faith and activities.

[29] Finally, the Applicants submit that the RAD's finding that Hyderabad is a safe IFA is not reasonable. The Applicants assert that that it is essential for the RAD to have regard to the totality of evidence on the record when reaching its decision (*Balachandran, Kandiah v Canada (Minister of Citizenship and Immigration)* 1997 CanLII 4747 (FC)). They submit that the RAD ignored documentary evidence, including the NDP evidence demonstrating that complicity, indifference, and corruption of the police in Pakistan is a significant factor in assessing if Hyderabad has a serious possibility of persecution.

[30] In my view, the RAD's decision on the viability of Hyderabad as an IFA is reasonable. The RAD has considered the objective evidence in the NDP and other sources and concluded that the Applicants have failed to demonstrate that relocating to Hyderabad would put them at risk or would be unduly harsh or objectively reasonable. The RAD's reasoning as to why the

Applicants have a viable IFA is intelligible, transparent and justified (*Vavilov* at paras 15, 98). The RAD's findings on the potential IFA are factual, based on the evidence and the arguments presented by the parties. I therefore find no basis upon which to intervene.

[31] The RAD specifically analyzed the objective evidenced cited by the Applicants, including conflicting parts of the NDP, and noted that other objective evidence suggested that the Applicants would not, on a balance of probabilities, face a serious possibility of persecution in Hyderabad. The RAD did not disregard or ignore evidence that squarely contradicted its finding such as to render its decision unreasonable (*Ehigiator v Canada (Citizenship and Immigration)*, 2023 FC 308 at paras 71-74; *Rajput v Canada (Citizenship and Immigration)*, 2022 FC 65 at para 25). Not only is the RAD presumed to have considered the entire NDP, but it specifically addressed the arguments raised by the Applicants in relation to the SSP and other militant groups, and their activities in Pakistan.

[32] The Applicants rely on generalized country conditions in Pakistan to bolster their argument that they are at risk in Pakistan as a whole. However, they do not point to any specific evidence in relation to the proposed IFA, Hyderabad. While the NDP does mention some country condition research and examples of harm, such evidence cannot establish risk for the whole country. General country conditions do not render a specific IFA unreasonable. There is a high onus on an applicant to show that it would be unreasonable to expect them to relocate in the proposed IFA. Reliance on general country conditions is not sufficient (*Mansour c Canada (Ministre de la Citoyenneté et de l'immigration)*, 2023 CF 299 at para 66, *Arabambi v Canada*

*(Citizenship and Immigration)*, 2020 FC 98 at paras 38, 40-42; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 23).

[33] In this case, the RAD presented a number of reasons, all found in the NDP, to find that the Applicants would not, on a balance of probabilities, face a serious possibility of persecution or a danger of torture or a risk to life or of cruel and unusual punishment in Hyderabad. The RAD relied on the NDP to conclude that the SSP was not dominant in the proposed IFA, that no other anti-Shia groups had a strong presence in Hyderabad, that there was no evidence that other anti-Shia groups shared information with the SSP or were aware of the Applicants' existence, and that "Hyderabad is very accepting of minorities." The RAD also examined the objective evidence and held that while there is corruption in the police, communications in relation to residential tenancies is only in high profile cases, which would not apply to the Applicants in Hyderabad.

[34] The RAD also relied on the Applicant's personal evidence as presented before the RPD. The RAD relied on the fact that there was no evidence that the Applicants were of a sufficiently high profile to motivate the SSP or other extremist groups to target them in Hyderabad, and the Applicants have not been threatened since they left Pakistan. These findings lead the RAD to conclude that the SSP and other militant groups are not motivated or capable to find the Applicants in the IFA. The RAD also relied on evidence that Ms. Nazir's husband was able to travel back to Pakistan in 2020 without any evidence of continued harassment.

[35] The Applicants reliance on the cases of *Londono* and *Builes* is misguided. In *Londono*, the tribunal was found to ignore clear evidence of the Revolutionary Armed Forces of Columbia repeatedly and personally targeting the applicant, which is not the case here. In *Builes*, the tribunal speculated on the agent's motive without any evidentiary basis.

[36] As set out above, in this case, the RAD provided ample reasons justifying its conclusion that the Applicants' profile was not one that would, on a balance probabilities, suggest that agents of prosecutions would be motivated to find them in Hyderabad. On the one hand, the Applicants questioned the RAD's conclusion that the Applicants' profile on a socioeconomic basis was not sufficiently "high" to attract attention and argued that this ground is not necessarily relevant when the SSP is known to target based on religious grounds. On the other hand, if the Applicants' fear is on religious grounds, the RAD relied on the NDP which states that "Hyderabad is very accepting of minorities" (NDP item 12.40).

[37] The Applicants clearly disagree with the RAD's findings of fact. Unfortunately, their request is essentially that the Court performs an examination of the evidence *de novo* and re-weighs the RAD's evidentiary assessment. Unfortunately, this is not the Court's role on judicial review (*Wu v Canada (Citizenship and Immigration)*, 2023 FC 1071 at para 27; *Vavilov* at para 125).

## VI. Conclusion

[38] The RAD's decision that the Applicants have a viable IFA in Hyderabad is reasonable.

[39] The judicial review should be dismissed.

[40] The parties have not proposed any question for certification and I agree that none arise.

**JUDGMENT in IMM-9429-22**

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

1. The application for judicial review is dismissed.
2. No question for certification is certified.

"Guy Régimbald"

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Judge

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

**DOCKET:** IMM-9429-22

**STYLE OF CAUSE:** SHAFIA NAZIR, KINZA NADEEM, JAVERIA  
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