Federal Court  Cour fédérale

Date: 20231012

Docket: IMM-2170-22

Citation: 2023 FC 1362

Ottawa, Ontario, October 12, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

JAYANT SHRAVAN LOKHANDE
GURJEET JAYANT LOKHANDE
ANSH JAYANT LOKHANDE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] Jayant Shravan Lokhande (the principal applicant), his wife Gurjeet Jayant Lokhande (the associate applicant), and their son Ansh Jayant Lokhande (the minor applicant) are citizens of India. In December 2019, they sought refugee protection in Canada on the basis of their fear of a criminal gang with whom the principal applicant had come into conflict due to the behaviour of

some of its members in his restaurant in Mumbai. After escalating conflicts with the gang, the applicants left Mumbai for Pune in April 2018. After being attacked by unknown assailants there, during which attack the minor applicant was abducted briefly, the applicants left India for Canada in August 2018.

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) heard the applicants' claims virtually on December 3, 2020, and April 13, 2021. In an oral decision delivered on April 13, 2021, the RPD rejected the claims because it found that the applicants had a viable internal flight alternative (IFA) (three specific places in India were identified). The RPD examined the claims solely under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) because it was not satisfied that the applicants had established a nexus to a Convention ground.

[3] The applicants appealed the RPD's decision to the Refugee Appeal Division (RAD) of the IRB. They submitted that the conduct of the RPD member gave rise to a reasonable apprehension of bias and that their counsel was precluded from examining the principal applicant, thereby breaching the requirements of procedural fairness. They also submitted that the RPD erred in finding that their claims did not have a nexus to a Convention ground and that they have a viable IFA.

[4] The RAD dismissed the appeal in a decision dated February 17, 2022. The RAD found that the applicants had not established either a reasonable apprehension of bias or a breach of procedural fairness. The RAD agreed with the RPD that there is no nexus to a Convention

ground but, even if the claim is considered under section 96 as well as section 97 of the *IRPA*, the applicants have a viable IFA in any event. Accordingly, the RAD confirmed the RPD's determination that the applicants are neither Convention refugees nor persons in need of protection.

[5] The applicants now apply for judicial review of the RAD's decision under subsection 72(1) of the *IRPA*. They submit that the RAD's conclusions that their claim does not have nexus to a Convention ground and that, in any event, they have a viable IFA are unreasonable. They also challenge the RAD's rejection of their grounds of appeal alleging a reasonable apprehension of bias on the part of the RPD and a breach of procedural fairness.

[6] For the reasons that follow, I am not persuaded that there is any basis to interfere with the RAD's decision. This application will, therefore, be dismissed.

II. STANDARD OF REVIEW

[7] There is no dispute that the RAD's decision should be reviewed on a reasonableness standard. All of the grounds for review raised by the applicants relate to the merits of the RAD's decision on their appeal. Following *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10, there is a presumption that the merits of an administrative decision are reviewed on a reasonableness standard. See also *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 39. A reviewing court should derogate from this presumption only where the legislature has indicated that it intends a different standard to apply or where the rule of law requires that the standard of correctness applies *(Vavilov* at para 17).

There is no basis to derogate from this presumption here, even though questions of procedural fairness are among the issues addressed by the RAD: see *Ahmad v Canada (Citizenship and Immigration)*, 2021 FC 214 at para 13; *Acosta Rodriguez v Canada (Citizenship and Immigration)*, 2021 FC 1298 at para 5; *Rodriguez v Canada (Citizenship and Immigration)*, 2022 FC 774 at para 17; and *Oluwatusin v Canada (Citizenship and Immigration)*, 2023 FC 378 at paras 5-6.

[8] 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). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied that "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).

III. ANALYSIS

[9] Looking first at the allegation of a reasonable apprehension of bias, this arose from difficulties the interpreter was having keeping up with the associate applicant's testimony during the second day of the hearing as she was being questioned by the RPD member. (The principal applicant testified on the first day of the hearing.) At one point the member asked the

associate applicant to try to break her answers into small parts. When this was evidently not working, counsel for the applicants suggested he would raise his hand to signal when the associate applicant should pause so that the interpreter could interpret what she had said. The interpreter stated that she had been trying to do this too. The RPD member then interjected: "I think a yardstick might work better, Counsel." Counsel repeated that he would put his hand up. The examination of the associate applicant then continued to its conclusion without further incident.

[10] The RAD found that the RPD's yardstick comment was "extremely inappropriate." The RAD also accepted that the comment may have made the applicants "feel uncomfortable and nervous." Nevertheless, the RAD was satisfied that the applicants were able to testify in detail and without difficulty about their narrative. (As noted, in fact the principal applicant had testified at the previous sitting, before the comment was made.) The RAD also noted that the RPD had found the applicants' narrative credible. Consequently, "even if they were nervous or uncomfortable, this did not impact the outcome of the hearing in terms of the RPD's findings." The applicants also argued more broadly that the RPD had minimized the seriousness of their claim, made biased remarks, and made racial slurs during the hearing. The RAD could find nothing in the record to support these allegations.

[11] On review, the applicants repeat the very same arguments they made to the RAD. Their submissions on this point in their memorandum of argument are literally copied and pasted from their written submissions to the RAD. (In fairness, the applicants were self-represented when they filed their Application Record.) The applicants have not identified any basis to interfere

with the RAD's rejection of this ground of appeal. The RAD's determination is based on a reasonable (indeed, correct) understanding of the legal test for a reasonable apprehension of bias and an altogether reasonable assessment of the record.

[12] The submission that the RPD breached procedural fairness by denying the applicants' counsel the opportunity to question the principal applicant is equally without merit. The RAD noted that the principal applicant had been questioned at length by both the RPD and by counsel at the first sitting on December 3, 2020. The matter was put over to the second sitting to hear from the associate applicant and for submissions. When counsel for the applicants stated at the second sitting that he had some questions for the principal applicant, the RPD reminded counsel that they were "already finished with him." Without objection, counsel for the applicants then proceeded to question the associate applicant. Once again, on review, the applicants simply repeat their submissions to the RAD on this point. They have not established any basis to interfere with the RAD's rejection of this ground of appeal.

[13] Turning to the IFA issue, as already mentioned, the applicants submitted in their appeal that the RPD erred in finding that there was no nexus to a Convention ground. The RAD agreed with the RPD that there was no nexus but found that, considering the claim under both section 96 and section 97 of the *IRPA*, the applicants had a viable IFA.

[14] The test for an IFA is well-established. It is a place in their country of nationality where a party seeking protection would not be at risk (in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the *IRPA*) and to

which it would not be unreasonable for them to relocate. When there is a viable IFA, a claimant is not entitled to protection from another country. To counter the proposition that they have a viable IFA, a party seeking protection has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in all the circumstances for them to relocate there. For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); and *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA).

[15] Given the RAD's alternative finding, there is no need to consider whether it erred in agreeing with the RPD that the applicants had not established a nexus to a Convention ground. The determinative issue is whether, having considered the claim under both section 96 and section 97 of the *IRPA*, its conclusion that the applicants have a viable IFA is unreasonable.

[16] Like the RPD, the RAD found that the applicants' narrative was credible, including their account of the attack in Pune and the abduction of the minor applicant. The RAD found, however, that the applicants had failed to establish that they would be at risk in the proposed IFAs. To the contrary, the RAD found on a balance of probabilities that the agents of persecution would not know that the applicants had relocated to one of the identified IFA locations; indeed, they would not even know where to begin looking for them, let alone have the means to find them. With respect to the second branch of the IFA test, the RAD noted that the applicants had not raised any arguments on appeal challenging the RPD's determination that it

was also satisfied. In any event, the RAD agreed with and adopted the RPD's analysis of the reasonableness of the proposed IFAs.

[17] As with the other issues, the applicants have simply repeated the submissions they made to the RAD. They have not established any basis to interfere with the RAD's IFA determination. In my view, this determination is altogether reasonable. It is explained by reasons that are clear, intelligible, and justified in light of the applicable test and the record before the decision maker.

IV. CONCLUSION

[18] For these reasons, the application for judicial review will be dismissed.

[19] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-2170-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2170-22
STYLE OF CAUSE:	JAYANT SHRAVAN LOKHANDE ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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