

Federal Court



Cour fédérale

Date: 20240118

Docket: IMM-1646-23

Citation: 2024 FC 71

Ottawa, Ontario, January 18, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**RAM GOPAL
RENU DEVI**

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 January 16, 2023 [Decision]. In the Decision, the RAD dismissed the Applicants' appeal from a decision of the Refugee Protection Division [RPD] and upheld the RPD's decision that the Applicants are neither Convention refugees nor persons in need of protection under section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in greater detail below, this application is allowed, because the RAD erred in failing to consider an asserted basis for the fear of persecution claimed by the Applicants.

II. Background

[3] The first Applicant named above [Principal Applicant] and the second Applicant, his wife, are citizens of India, from Karnal in the state of Haryana. They fear harm at the hands of an individual identified in the Decision as “AK”, who is a member of the Bharatiya Janata Party [BJP] in their village, and fear the BJP itself, because the Principal Applicant was a member of the rival Indian National Lok Dal [INLD] party. The Applicants also allege that they fear AK because of a dispute regarding agricultural land owned by the Principal Applicant and his family.

[4] The Applicants left India for Canada in August 2019 and claimed refugee protection. The RPD rejected their claim on the basis that they had a viable internal flight alternative [IFA] in Delhi. The Applicants appealed the RPD’s decision to the RAD. In the Decision under review in this application, the RAD dismissed the Applicants’ appeal.

III. Decision under Review

[5] The RAD first considered the RPD’s application of the first prong of the IFA test, which requires a finding that there is no serious possibility that the Applicants will be persecuted in the proposed IFA or personally subject to a risk to life or of cruel and unusual treatment or punishment in the IFA. The RAD concluded that the RPD was correct in finding that the

Applicants had not established that the agents of persecution had the motivation to locate them in the proposed IFA.

[6] In arriving at this conclusion, the RAD considered the RPD's finding that the Applicants did not establish that AK had a continuing interest in pursuing the Principal Applicant because of his political affiliation. The Principal Applicant had been in Canada since August 2019 and had not since then participated in any political activities in Haryana. While the Principal Applicant had testified that conflicts of this sort were based on a strong rivalry and therefore never-ending, the RAD agreed with the RPD that the Principal Applicant was speculating that AK would want to continue this rivalry and seek him throughout India.

[7] The RAD also agreed with the RPD that, as the INLD is a Haryana-based party and does not have a presence in Delhi, the Applicants had not explained why AK would be motivated to seek them there, when the Principal Applicant would no longer be working for a rival party.

[8] The RAD also concurred with adverse credibility findings that the RPD made, related to the Principal Applicant's testimony surrounding the outcome of a trial of his father, on charges that he had assaulted AK, and his testimony as to when AK had last inquired about him. The RAD agreed with the RPD's conclusion that the Principal Applicant's testimony was inconsistent and evolving.

[9] In relation to the land dispute, the RAD found that the RPD was correct in concluding that the Applicants had not established that this dispute would cause AK to have interest in

pursuing them. The Applicants had not communicated with AK since they left India, and the RAD found that it was not reasonable to suggest that AK would focus on the Principal Applicant as a target when the other co-owners of the land remained in the same village. The RAD also referenced jurisprudence explaining that, as claimants may have to make reasonable choices to free themselves of a risk from harm, including relinquishing property rights, disputes surrounding such rights are not a basis for a refugee claim.

[10] Also in relation to the first prong of the IFA test, the RAD considered whether the agents of persecution had the means to locate the Applicants, through their use of the Aadhaar Card, the tenant registration system, or the Crime and Criminal Tracking Network System, and found that they did not. As such, the RAD rejected the Applicant's submission that they would have to remain in hiding in the proposed IFA.

[11] Turning to the second prong of the test, which considers whether it would be reasonable for a claimant to relocate to a proposed IFA, the RAD considered the Applicants' language skills and work experience, as well as the fact that the Applicants did not provide specific submissions with respect to this prong. The RAD concluded that it would not be objectively unreasonable for them to relocate.

[12] In conclusion, the RAD dismissed the Applicants' appeal and confirmed the decision of the RPD that the Applicants are neither Convention refugees nor persons in need of protection.

IV. Issues and Standard of Review

[13] The Applicants articulate the following issues for the Court's consideration:

- A. Did the RAD err by ignoring one of the fundamental bases of the Applicants' claim, thereby misconstruing the risk the Applicants would face in the proposed IFA?
- B. Did the RAD make unreasonable credibility findings?

[14] These issues are reviewable on the presumptive reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 653 [*Vavilov*] at para 16)

V. Analysis

[15] My decision to allow this application for judicial review turns on the Applicants' argument that the RAD erred by ignoring one of the bases of their claim.

[16] In the Principal Applicant's amended narrative, submitted to the RPD in advance of the hearing, he stated that, even if he was not targeted by AK, he believed that his support for the INLD, or for other minority parties which stand for the same principles as the INLD, would cause him to be targeted by BJP supporters wherever he lived.

[17] In its decision, the RPD noted that the Applicants' claim included an allegation that BJP supporters would target them wherever they relocate in India, because the Principal Applicant would stand for minority parties that work for the same principles as the INLD. The RPD explained that it had therefore examined the interest, not only of AK but also of BJP party supporters, in inquiring about the Applicants in the proposed IFA location should they return to India. However, noting that the INLD is a Haryana-based party with no presence in Delhi, the

RPD found that there was no evidence to suggest that the Principal Applicant would be targeted by BJP supporters for supporting other minority parties in Delhi, where the ruling party is the AAP (which I understand to be a reference to the Aam Aadmi Party).

[18] In their Memorandum of Argument, submitted to the RAD in support of his appeal, the Applicants referenced the Principal Applicant's amended narrative and stated that the Applicants felt they would not be safe anywhere in India because they were being targeted by AK, who had connections with the BJP, and because they would support either the INLD or other minority parties that stand for similar principles and which lie in opposition to the BJP. The Applicants submitted that, as a consequence, they feared that they would be targeted by BJP supporters wherever they lived in India.

[19] Similarly, in support of their position that the RPD erred in assessing the risk they would face on relocating to the proposed IFA, the Applicants' Memorandum of Argument before the RAD referenced the RPD's reliance on the fact that the BJP was not the ruling party in Delhi to conclude that the BJP would not have the means or connections to pursue them in the proposed IFA. The Applicants submitted that, while the BJP was not the ruling party in Delhi state, it was the national ruling party in India and consequently had large membership and influence across the country. As such, the Applicants argued that, in failing to consider the BJP's scope and influence, the RPD improperly assessed the risk they would face at the hands of the BJP in the proposed IFA, resulting from either their history with AK or from their political alignment that places them in opposition to the BJP.

[20] In its Decision, when summarizing the RPD's findings, the RAD noted the RPD's reasoning that the INLD is a Haryana-based party with no presence in Delhi, that the Applicants had not established that they had a profile that would motivate BJP to search for them there, and that there was no evidence that the BJP would target the Applicants because of their support for the INLD and similar minority parties. However, that observation as to the RPD's reasoning represents the Decision's only reference to the assertion of fear of BJP supporters attributable to the Applicants supporting minority parties with political principles similar to the INLD if they were to move to the proposed IFA.

[21] The Respondent argues that the Decision demonstrates that the RAD did consider this asserted fear. The Respondent references the RAD's reasoning that the very reason the agent of persecution allegedly sought the Principal Applicant, *i.e.*, his political affiliation with the INLD, would be absent in the IFA, because the INLD is a Haryana-based party and does not have a presence in Delhi. The Respondent also argues that the RAD explicitly found that there was no evidence that the BJP remains interested in the Principal Applicant. The RAD reasoned that, if AK had no interest in pursuing the Applicants throughout India, nor would the BJP be so interested. The Respondent further notes the RAD's observation that the Principal Applicant had not participated in any political activity in Haryana while in Canada.

[22] In my view, that the Respondent's arguments are not responsive to the Applicants' submission, as the portions of the Decision upon which they rely do not demonstrate any consideration or analysis of the possibility of the Principal Applicant supporting minority parties in Delhi with values similar to those of the INLD if he were to return there as an IFA. I

appreciate the Respondent's position that, if the BJP was not interested in pursuing the Applicants, its supporters would not develop such an interest if the Applicants began supporting an opposing political party in the IFA. However, as the Applicant argued in reply at the hearing of this application, such an analysis does not form part of the RAD's reasons. As emphasized in *Vavilov*, reasonableness review focuses upon the administrative decision-maker's reasons, and it is not the Court's role to substitute reasons that might have been, but were not, provided by the decision-maker (at para 96).

[23] *Vavilov* also emphasizes the importance of the parties' submissions as a constraint upon a decision-maker that informs consideration of the reasonableness of a decision. The principles of justification and transparency underlying reasonableness review require that a decision-maker's reasons meaningfully account for the central issues and concerns raised by the parties (at paras 106 and 127). Consistent with that principle, it is a reviewable error for the RAD to have failed to consider a basis for a refugee claimant's asserted fear (*Xie v. Canada (Citizenship and Immigration)*, 2019 FC 1458 at para 24).

[24] Based on the above analysis, the decision is unreasonable, and this application for judicial review will be allowed, the Decision set aside, and the matter returned to another member of the RAD for redetermination. As such, it is unnecessary for the Court to consider the Applicant's other arguments.

[25] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-1646-23

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and this matter is returned to another member of the RAD for redetermination. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1646-23

STYLE OF CAUSE: RAM GOPAL AND RENU DEVI v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO,ON

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