

Federal Court



Cour fédérale

Date: 20240209

Docket: IMM-13640-22

Citation: 2024 FC 210

Toronto, Ontario, February 9, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

QAMAR NAWAZ SHAKIR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Qamar Nawaz Shakir, is seeking judicial review of a decision dated December 12, 2022 [Decision] whereby the Refugee Appeal Division [RAD] dismissed his appeal and confirmed the Refugee Protection Division's [RPD] decision denying his refugee claim. Mr. Shakir's claim for refugee protection under both sections 96 and 97 of the

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] was rejected because a viable internal flight alternative [IFA] exists for him in Karachi in his country of citizenship, Pakistan.

[2] Mr. Shakir is asking the Court for an order setting aside the Decision. He submits that both the RPD and the RAD failed to properly assess his claim as they did not consider evidence showing that his alleged persecutors continue to be interested in locating him. Furthermore, Mr. Shakir submits that the RAD erred in its assessment of Karachi as a viable IFA, notably, by omitting to address his status as a high profile Shia Muslim.

[3] For the reasons that follow, I will dismiss this application for judicial review. Despite the able arguments made by counsel for Mr. Shakir, I am satisfied that the RAD reasonably considered the evidence before it in concluding that Mr. Shakir has a viable IFA in Karachi, and took into account Mr. Shakir's profile in arriving at this conclusion. The RAD's findings have the qualities that make its reasoning logical and consistent in relation to the relevant legal and factual constraints. There are no grounds for the Court to intervene.

II. Background

A. *The factual context*

[4] Mr. Shakir is a Shia Muslim from Pakistan. He came to Canada in July 2019 and filed a refugee claim at the end of August 2019. As the basis for his claim, Mr. Shakir alleged that, owing to his high profile activities within the Shia Muslim community in his region, he had been attacked and intimidated on multiple occasions by the Sipa Sahaba [SSP], an extremist Sunni group in Pakistan, between June and July 2019. In July 2019, Mr. Shakir was extortionately ordered to pay a large fine to the SSP, which he did not. The SSP threatened to kill him, and

went so far as to open fire outside of the factory that he owned to force him into paying the ransom. Mr. Shakir fled to Canada shortly thereafter and made his refugee claim.

[5] The day before Mr. Shakir's hearing before the RPD, Mr. Shakir amended his basis of claim [BOC] narrative and submitted a new affidavit from his brother attesting to further events in Pakistan. Therein, Mr. Shakir's brother alleged that he too was threatened by the SSP in February 2022 because Mr. Shakir had not paid the extortion amount. The brother further claimed that his home was raided in March 2022, and that the police registered a complaint for blasphemy against Mr. Shakir, based on the testimony of a religious leader connected with the SSP.

B. *The RPD decision*

[6] The RPD found that Mr. Shakir was credible insofar as they believed the 2019 attacks he outlined in his original BOC narrative occurred. However, the RPD rejected the facts alleged to have occurred in 2022 in the amended BOC and the additional affidavit from Mr. Shakir's brother. To this effect, the RPD found that the late filing of his amended BOC narrative and his brother's second affidavit, coupled with the fact that his testimony concerning the alleged incidents in February and March 2022 was much more vague than his testimony about what he had witnessed firsthand in Pakistan, undermined his credibility with respect to the alleged events of 2022. The RPD consequently concluded that Mr. Shakir did not establish that the police are looking for him or that the SSP have been harassing his family since he left Pakistan.

[7] The RPD then proceeded to assess whether Mr. Shakir had a viable IFA in Karachi—a city of 16 million people located approximately 1300 kilometers from Sialkot, where Mr. Shakir is from.

[8] With respect to the first prong of the IFA test, the RPD acknowledged that terrorist groups operate throughout Pakistan, but it did not find sufficient evidence that the SSP had the ability to track Mr. Shakir everywhere in the country. The RPD further remarked that Mr. Shakir had not established that the SSP or the police had been pursuing him since he exited the country, nor that Mr. Shakir had a prominent profile in Pakistan. Consequently, the RPD concluded that the SSP had neither the means nor the motivation to track him in Karachi.

[9] With respect to the second prong of the IFA test, the RPD concluded that the documentary evidence indicates that Shia Muslims can and do reside in Karachi, and that insufficient evidence was presented indicating that Mr. Shakir would not be able to access employment or educational opportunities there, or that he would face a serious possibility of persecution due to his religious beliefs. The RPD further noted, in relation to Mr. Shakir's arthritis, that he would still be able to receive medical care and medications in Karachi. Ultimately, the RPD determined that both prongs of the IFA test were satisfied and that Mr. Shakir has a viable IFA in Karachi.

C. *The RAD Decision*

[10] The RAD similarly drew a negative credibility finding against Mr. Shakir for the late amendment to his BOC narrative and the filing of a second affidavit from his brother. On that point, the RAD noted that Mr. Shakir testified that his brother informed him of the threats made

against him by the SSP on February 23, 2022, but only filed the second affidavit with the RPD on April 21, 2022—one day prior to his RPD hearing on April 22, 2022. The RAD further found Mr. Shakir’s testimony with respect to the alleged events in February and March 2022 to be “evasive and inconsistent”. Consequently, the RAD concluded that Mr. Shakir did not demonstrate that the SSP remained interested in pursuing him, nor that they had the means to do so. This conclusion led the RAD to find that Mr. Shakir did not satisfy his burden with respect to the first prong of the IFA test.

[11] With respect to the second prong of the IFA test, the RAD, like the RPD, assessed the objective documentary evidence and concluded that violence against Shia Muslims has been declining in recent years in Pakistan. The RAD also noted that there is a significant number of Shia Muslims residing in Karachi and that the size of the city created an opportunity for a certain degree of anonymity. Finally, the RAD agreed with the RPD that Mr. Shakir would be able to find employment and to access health services for his arthritis in the IFA city. The RAD therefore upheld the RPD’s finding that both prongs of the IFA test are satisfied and that a viable IFA exists for Mr. Shakir in Karachi.

D. *The standard of review*

[12] It is not disputed that the standard of reasonableness applies to the Decision under review and to findings regarding the existence of a viable IFA (*Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557 at para 16; *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at para 19; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 14; *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62 at para 6; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 [*Singh 2020*] at para 17; *Kaisar v Canada*

(*Citizenship and Immigration*), 2017 FC 789 at para 11). This is confirmed by the Supreme Court of Canada’s landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

[13] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[14] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention”, seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13), without “reweighing and reassessing the evidence” before it (*Vavilov* at para 125).

[15] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

III. Analysis

[16] Mr. Shakir submits that the RPD and the RAD failed to assess his claim properly as, according to him, they did not consider his new evidence that his persecutors continue to be interested in locating him. More specifically, Mr. Shakir contends that the RAD took a too microscopic view of the testimony he offered and of the timeline related to the evidence he provided about the 2022 events. Furthermore, Mr. Shakir argues that the RAD erred in its assessment of Karachi as a viable IFA, notably by turning a blind eye to his high profile in the Shia Muslim community.

[17] I am not convinced by the submissions put forward by Mr. Shakir.

[18] As pointed out by the respondent, the Minister of Citizenship and Immigration [Minister], the RAD correctly applied the two-prong IFA test and reasonably concluded that Mr. Shakir has a viable IFA in Karachi. Mr. Shakir has simply not established that his agents of persecution have the motivation or means to find him in the proposed IFA, or that it would be unreasonable for him to relocate there.

A. *The applicable test on IFA determinations*

[19] The test to determine the existence of a viable IFA comes from *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) and *Thirunavukkarasu v*

Canada (Minister of Employment and Immigration), [1994] 1 FC 589 (CA) [*Thirunavukkarasu*]. Those decisions from the Federal Court of Appeal state that two criteria must be established, on a balance of probabilities, in order to find that a proposed IFA is reasonable: 1) there must be no serious possibility of the claimant being subject to persecution in the part of the country in which the IFA exists; and 2) it must not be unreasonable for the claimant to seek refuge in the IFA, upon consideration of all their particular circumstances.

[20] In *Singh 2020*, this Court reminded that “the analysis of an IFA is based on the principle that international protection can only be offered to refugee protection claimants in cases where the country of origin is unable to provide to the person requesting refugee protection adequate protection everywhere within their territory” [emphasis added] (*Singh 2020* at para 26). If a refugee claimant has a viable IFA, this will negate a claim for refugee protection under either section 96 or 97 of the IRPA, regardless of the merits of other aspects of the claim (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 7).

[21] When an IFA is established, the onus is on the refugee claimant to demonstrate that the IFA is inadequate (*Thirunavukkarasu* at para 12; *Salaudeen v Canada (Citizenship and Immigration)*, 2022 FC 39 at para 26; *Manzoor-Ul-Haq v Canada (Citizenship and Immigration)*, 2020 FC 1077 at para 24; *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paras 43–44).

B. *There is no serious possibility of persecution or risk in the proposed IFA location*

[22] Mr. Shakir takes issue with the RAD's treatment of his evidence (his testimony and his brother's second affidavit) regarding the alleged continued interest of his persecutors and the February and March 2022 events. I find no merit to this argument.

[23] In my view, it was open to the RAD to question the authenticity of this new information relating to the 2022 events in light of its late disclosure (*Adekanmi v Canada (Citizenship and Immigration)*, 2021 FC 283 at para 40 [*Adekanmi*]). This is particularly true given the timing with which this information was provided to the RPD, and the subsequent "evasive and inconsistent" testimony provided by Mr. Shakir. Before the RPD, Mr. Shakir was asked why he waited so long to bring that 2022 evidence to the RPD's attention if he knew about the alleged incidents detailed in his brother's second affidavit for some time, and specifically prior to April 11 2022 when he filed his brother's first affidavit that did not outline any of these events. In response, Mr. Shakir noted that the delay was because he had sent the foreign language document to be translated approximately a week before it was submitted. He further stated that, since he was fasting due to Ramadan, his schedule was thrown off.

[24] The RAD found Mr. Shakir's explanations unreasonable. The RAD recognized that his routine could have been affected by fasting. However, the RAD concluded that this does not justify omitting to disclose at the earliest possible moment the information that he was aware of. The RAD further highlighted that the alleged 2022 events were crucial to his claim, considering that, three years after he left Pakistan, the SSP allegedly had a renewed interest in pursuing its extortion demands, his family was being threatened and harassed, and the Pakistani police was now an additional agent of persecution owing to the filing of the alleged police report.

[25] Indeed, this Court has recognized that it is open to the RAD to question an amendment to a factual element at the heart of a basis of a claim when it is made on the eve of the RPD hearing, and that a decision-maker can draw a negative credibility inference from such last-minute filing (*Adekanmi* at para 40, citing *Forvil v Canada (Citizenship and Immigration)*, 2020 FC 585 at para 51; *Gonzalez Hernandez v Canada (Citizenship and Immigration)*, 2012 FC 1097 at paras 35–36; *Sibanda v Canada (Minister of Citizenship and Immigration)*, 2003 CF 1400 at para 19). This is particularly true in this case, where Mr. Shakir had submitted information to the RPD on April 11, 2022, was aware of the additional alleged events, and remained silent about them until one day before the hearing. Here, the RPD took issue not solely with the lateness of the filing of the information, but also with Mr. Shakir’s failure to disclose the alleged events when he submitted documentation to the RPD on April 11, 2022.

[26] Further to my review of the RAD’s reasons, I am satisfied that the RAD could reasonably find that Mr. Shakir’s amendments to his BOC, and his brother’s second affidavit, were not credible.

[27] The RAD then proceeded with the first prong of the IFA analysis, concluding that there was insufficient evidence to establish that there was a serious possibility that Mr. Shakir would be at risk in Karachi. The RAD was not persuaded, on a balance of probabilities, that the local SSP had the ability to track him outside their geographic area. Given the lack of any remaining evidence, the RAD could reasonably conclude that the first prong of the IFA test was met. Indeed, to demonstrate that an IFA is unreasonable, there must be “actual and concrete evidence of conditions that would jeopardize an applicant’s life and safety in travelling or temporarily

relocating to the proposed safe area” (*Thirunavukkarasu* at p 594–595). Here, no such evidence has been provided.

[28] Moreover, and contrary to Mr. Shakir’s allegations, the weighing of the probative value of the evidence is within the expertise of the RPD and the RAD, and Mr. Shakir’s mere disagreement does not warrant this Court’s intervention. It is well established that, on matters of credibility and the assessment of facts, the RAD and the RPD are specialized tribunals empowered to assess the plausibility and credibility of testimony insofar as the inferences drawn by the tribunal are not unreasonable (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1558 at para 28, citing *Aguebor v Minister of Employment and Immigration*, (1993), 160 NR 315 (FCA) at para 4; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 79 at para 41). To be reasonable, a decision must be justified with transparent and intelligible reasons that uncover an internally coherent reasoning (*Vavilov* at paras 86, 99). Here, the RAD properly explained how it came to the conclusion that the testimonial and documentary evidence submitted by Mr. Shakir was not credible.

[29] In the absence of other evidence, it was therefore reasonable for the RAD to conclude that Mr. Shakir did not meet his onus of demonstrating that the IFA is inadequate (*Thirunavukkarasu* at para 12). In her submissions before the Court, counsel for the Mr. Shakir pointed to some passages of the Decision that, in her view, were inaccurate, not considered, or not sufficiently justified. With respect, I do not agree. A judicial review is not a “line-by-line treasure hunt for error” and a reviewing court must instead consider the administrative decision maker’s reasoning and conclusion as a whole (*Vavilov* at para 102; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Communications, Energy and*

Paperworkers Union of Canada, Local 30 v Irving Pulp & Papier Ltd, 2013 SCC 34 at para 54). To echo the Federal Court of Appeal’s decision in *Zeifmans LLP v Canada*, 2022 FCA 160 [*Zeifmans*], cited by the Minister, I am satisfied that, from explicit words in the RAD’s reasons or from implicit or implied elements in the record or both, the RAD was alive to the key issues raised by Mr. Shakir and reached a reasonable decision on them (*Zeifmans* at para 10).

C. *There is no serious possibility of persecution or risk in the proposed IFA location*

[30] Turning to the second prong of the IFA test, it “requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions” (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at para 15).

[31] On this part of the test, Mr. Shakir notably takes issue with the RAD’s consideration of his status as a high profile Shia man. With respect, I do not agree.

[32] I accept that the RAD could have offered a more expansive analysis. However, the reasons of the Decision clearly establish that the RAD was alive to Mr. Shakir’s Shia identity and concluded that he would not have to remain in hiding in the proposed IFA. Indeed, at paragraphs 50 and 51 of its Decision, the RAD specifically notes that the objective documentary evidence demonstrates that in Karachi, Sunnis and Shia live throughout the city and that there are significant numbers of Shia with a visible presence, including Shia-dominated neighbourhoods and hundreds of congregation centres. The RAD further found no credible evidence that systemic discrimination against Shia Muslims exists in gaining admission to the public service, police or

private sector. Moreover, the RAD noted that the objective evidence indicates that owing to Pakistan's size and diversity, there are viable relocation options for members of most ethnic and religious minorities and that internal relocation offers a degree of anonymity.

[33] Consequently, the Decision leaves no doubt that the RAD considered Mr. Shakir's identity as a high-profile Shia Muslim man in its assessment, and still determined that Karachi is a viable IFA for him. An administrative decision maker's reasons do not need to be comprehensive or perfect. They only need to be comprehensible and justified, and to meaningfully grapple with key issues or central arguments raised by a party. This is the case here.

[34] The party challenging an administrative decision must satisfy the reviewing court that "any shortcomings or flaws relied on... are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). In this case, the RAD considered Mr. Shakir's identity, and the RAD's reasoning can be followed without a decisive flaw in rationality or logic. The RAD's reasons provide a transparent and intelligible justification for the Decision (*Vavilov* at paras 81, 136). At paragraph 102 of *Vavilov*, the Supreme Court held that the reviewing court "must be satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived'". In the case of Mr. Shakir, it is easy to trace and to follow the RAD's line of analysis of the situation he faces, and the Decision bears the hallmarks of reasonableness, which are justification, transparency, and intelligibility (*Vavilov* at para 99).

[35] In sum, I find no serious deficiency in the Decision that would taint the analysis and that would be likely to undermine the requirements of justification, intelligibility, and transparency.

The only shortcomings are in Mr. Shakir's own evidence. My review of the RAD's analysis does not cause me "to lose confidence in the outcome reached" by the decision maker (*Vavilov* at para 122).

IV. Conclusion

[36] For the reasons set forth above, this application for judicial review is dismissed. I am satisfied that the RAD reasonably considered the evidence before it in concluding that Mr. Shakir has a viable IFA in Karachi. There are no grounds for the Court to intervene.

[37] There are no questions of general importance to be certified.

JUDGMENT in IMM-13640-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.
2. There is no question of general importance to be certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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