

Federal Court



Cour fédérale

Date: 20240212

Docket: IMM-4807-22

Citation: 2024 FC 228

Ottawa, Ontario, February 12, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

TSERING PALJOR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Appeal Division (the “RAD”). The Decision affirmed the Refugee Protection Division’s (the “RPD”) finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

II. Background

[2] Tsering Paljor (the “Applicant”) is a 31-year-old Tibetan man. He was born in India and has an Indian identity certificate, which serves as a travel document in place of an Indian passport. Whether or not he is a citizen of India is at issue on this application.

[3] While the Applicant is Tibetan in terms of national belonging, the territory of Tibet is claimed by China as an integral part of its territory. The Applicant opposes China’s policies in Tibet. He is a follower of the Dalai Lama, both religiously and politically. His father was displaced to India when he (the Applicant’s father) was a child. The Applicant’s mother was born in a Tibetan refugee camp in India in 1963.

[4] The Applicant entered Canada in 2014 on a study permit issued to his Indian identity certificate. The identity certificate has since expired, and the Applicant believes he has no right to return to India. The Applicant fears that if he is not allowed to stay in Canada, he would be returned to Tibet and become subject to persecution by Chinese authorities. To avoid this result, the Applicant had intended to find work in Canada after graduation and then apply to become a permanent resident, but after finding it difficult to secure a full-time position, he claimed refugee protection in July 2018.

[5] The RPD rejected the Applicant’s refugee claim. The RPD made a number of findings, some of which were set aside by the RAD. However, the determinative issue at both the RPD and the RAD was whether the Applicant had citizenship in India, and if he is able to assert his

citizenship rights. If so, then the Applicant would be able to avail himself to the protection of India, unless he also successfully claims that he is a Convention refugee or person in need of protection with respect to that country as well – which he did not.

[6] The RPD found that Indian citizenship laws provide that any individual born in India between early 1950 and mid-1987 is a citizen, as well as any individual born to an Indian citizen between mid-1987 and 2003. Therefore, the RPD held that the Applicant's mother has a right to citizenship, since she was born in India in 1963, and that the Applicant also has a right to citizenship since he was born in 1992 and his mother is a citizen.

[7] The RPD acknowledged the Applicant's allegation that (1) the Indian authorities often refuse to issue passports to Tibetans, (2) his mother has sought to assert her right to citizenship but was denied, and he would not be able to claim Indian citizenship as a result, and (3) even if citizenship is obtained, the Applicant risks losing certain entitlements as a Tibetan refugee in exile.

[8] With respect to the first allegation, the RPD found that the documentary evidence before it does not support the Applicant's concern that he would be denied his rights to citizenship merely because he is Tibetan. As for the second and third allegations, the RPD applied *Tretsetsang v Canada (Citizenship and Immigration)*, 2016 FCA 175 [*Tretsetsang*] which requires the Applicant to show that (1) there were significant impediments that reasonably prevented him from exercising his citizenship rights, (2) the Applicant made reasonable efforts to overcome those impediments, and (3) those efforts were unsuccessful. The RPD held that the Applicant's allegation that he would lose certain entitlements as a Tibetan in exile did not amount to a serious impediment. It further

held that, insofar as the Applicant's mother was personally denied recognition of her citizenship rights, the Applicant failed to make reasonable efforts to overcome the impediment.

III. The Decision

[9] On appeal to the RAD, the determinative issue again was whether the Applicant has a right to citizenship in India, and whether he has made reasonable efforts to overcome any serious impediment that prevents him from asserting those rights.

[10] The RAD identified certain errors in the RPD's analysis. First, it concluded that the RPD erred in assessing the Applicant's mother's right to citizenship by reference to a new law. Second, it accepted that there is evidence to support the Applicant's allegation that Indian authorities often deny Tibetans access to Indian passports, notwithstanding their rights to citizenship.

[11] Nonetheless, the RAD found the RPD's conclusions to be correct despite its errors. It found that the Applicant's mother was a citizen of India, no matter which iteration of India's citizenship laws are relied on. Therefore, the Applicant was also a citizen. The RAD further held that, the Applicant conflated *being* a citizen with having *proof* of citizenship. While the evidence may indicate that Tibetans in India face difficulties securing passports, that does not mean they are not citizens. Finally, the RAD held that the Applicant had failed to show that he made reasonable efforts to confirm whether India would recognize him as a citizen, contrary to the case law. In fact, the RAD found that the Applicant made no efforts to confirm his status.

[12] Based on the above, the RAD concluded that, since the Applicant is a citizen of India and has not raised allegations of persecution or risk in India, his claim for refugee protection is denied.

[13] The Applicant states that the RAD erred in (1) finding that the Applicant and his mother are Indian citizens, (2) the manner in which it applied *Tretsetsang*, and (3) finding that India is the country of reference.

IV. Issues

[14] Did the RAD err in (1) finding that the Applicant and his mother are Indian citizens, (2) the manner in which it applied *Tretsetsang*, or (3) finding that India is the country of reference.

V. Analysis

[15] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

A. *The Applicant's Citizenship*

[16] The Applicant argues that the RAD erred in finding that the Applicant and his mother are citizens of India simply because Indian citizenship laws deemed them so. He stresses that his mother's application for an Indian passport was rejected, and that securing a passport is necessary to prove citizenship. The Applicant further argues that the RAD's reasoning is contradictory, in that it concludes that the Applicant is a citizen while also finding that the Applicant did not make

reasonable efforts to “have his citizenship rights recognized”. Finally, the Applicant states that the RAD failed to account for precedents that were put before it post-hearing.

[17] However, the RAD reviewed India’s applicable laws with respect to citizenship, the relevant provisions of which state that individuals born in India between early 1950 and mid 1987 are Indian citizens, and that individuals born in India to at least one Indian parent between mid-1987 and 2003 are also citizens. It was reasonable of the RAD to conclude from these provisions that citizenship is automatic, and not contingent one’s ability to acquire an Indian passport as the Applicant alleges, and that the Applicant and his mother are citizens as a result.

[18] There is also no contradiction between the RAD’s finding that the Applicant is a citizen and its conclusion that he has not exerted reasonable efforts to overcome impediments to have his citizenship recognized, as required by *Tretsetsang*. The question of citizenship here is a threshold issue. Once it is established that a claimant does have citizenship rights under the laws of a particular state, only then can the *Tretsetsang* test be applied to ascertain whether there are impediments that cannot be addressed by the claimant and that prevent the claimant from having his citizenship rights *recognized* by the state in question – that is, to enjoy the benefits of citizenship, including the benefit of state protection.

[19] Furthermore, the RAD did not disregard the Applicant’s allegation that his mother was denied a passport. Nor did the RAD disregard evidence to suggest that Indian authorities often deny Tibetans’ passport applications. The RAD took note of both facts and considered them for the purpose of the *Tretsetsang* test. It was not necessary for the RAD to also consider them for the

purpose of determining whether the Applicant had citizenship rights. Again, those are distinct issues.

[20] Finally, the RAD was not required to review and cite all prior decisions of the Immigration Review Board (the “IRB”) that were provided by the Applicant. Moreover, the Applicant cites such cases to show that the IRB has previously found that certain Tibetan individuals entitled to Indian citizenship were not able to have it recognized and that their claim for refugee protection should be granted. However, the Applicant disregards the fact that assessing claims for refugee protection is individualized to the claimant. The fact that the IRB assessed other Tibetan individuals in a separate claim differently is not necessarily relevant to the reasonableness of the RAD’s decision here.

[21] I find that the RAD’s finding that the Applicant has citizenship rights was reasonable.

B. *Application of Tretsetsang to the Facts*

[22] The Applicant states that the RAD erred in its application of the law in this case. His argument rests on the following passage from *Tretsetsang*, at paragraph 73:

[73] What will constitute reasonable efforts to overcome a significant impediment (that has been established by any particular claimant) in any particular situation can only be determined on a case-by-case basis. A claimant will not be obligated to make any effort to overcome such impediment if the claimant establishes that it would not be reasonable to require such claimant to make any such effort.

[As emphasized by the Applicant]

[23] The Applicant argues that, in his case, the RAD failed to consider that a claimant will not be required to make efforts to have their citizenship recognized if it is not reasonable to require such an effort. The Applicant cites *Pasang v Canada (Citizenship and Immigration)*, 2019 FC 907 [Pasang], *Yalotsang v Canada (Citizenship and Immigration)*, 2019 FC 563 [Yalotsang], and *Norsang v Canada (Citizenship and Immigration)*, 2023 FC 998 [Norsang] as examples of this Court finding it was unreasonable to expect the claimants to make efforts to have their Indian citizenship recognized.

[24] In assessing claims for refugee protection, the Court must consider the facts of each case in the context provided by the evidence. Moreover, upon review of the cases cited by the Applicant, it is evident that they are distinguishable.

[25] In the case of *Pasang*, the claimant was a street vendor who relied on assistance from the Central Tibetan Administration (the “CTA”) to supplement his income, a political organization that assists Tibetans and acts as a government-in-exile. That record before the Court indicated that Tibetans “who apply” for an Indian passport must vacate their settlements in refugee camps and forgo assistance from the CTA. The Court held it was unreasonable to expect the claimant to attempt to apply for a passport “given his modest education, his employment as a street vendor, his residence in a Tibetan refugee settlement, and his potential reliance on benefits conferred” because of his status.

[26] In the case at bar, the facts show that the Applicant is a well educated man who graduated with an engineering degree from a university in Ontario. There is nothing to suggest that he is dependent on benefits conferred by the CTA or on a refugee settlement in India.

[27] In *Yalotsang*, the claimant provided a legal opinion from a lawyer in India as to whether he can successfully assert his citizenship rights in India. The Court observed that the lawyer's opinion was not considered by the decision-maker. In contrast, the Applicant in this case has not made any inquiries to ascertain whether the Indian authorities would refuse to recognize his citizenship. And while it is true that the Applicant did provide the RAD with an expert legal opinion stating in part that the Applicant can claim citizenship only if one of his parents is an Indian citizen, the RAD in this case considered the opinion thoroughly, summarized it, and noted its conclusions in its assessment of the evidence. The RAD still found that, in the Applicant's individual circumstances, he still needed to make reasonable efforts to assert his rights, and that he failed to do so.

[28] Finally, in *Norsang*, the claimant submitted an affidavit from his mother. The claimant's mother was a citizen under Indian law, but was not recognized as such. Her affidavit states that she "applied for Indian citizenship" twice in 2019, but was denied because the authorities told her that the government had not instructed them to "issue Indian Citizenship" to Tibetan refugees. The Court held that the RAD erred in not applying *Tretsetsang*. Specifically, the Court concluded that the RAD did not even consider whether there was a "serious impediment" to the recognition of citizenship that takes his citizenship out of his control, as sworn to by the claimant's mother (at

paras 20, 22). The RAD in *Norsang* wrongly assumed that, because the claimant is a citizen under the letter of the law, then that would preclude the existence of significant impediments.

[29] This is distinguishable from the Applicant's circumstances. Here, the RAD acknowledged that there were serious impediments barring the Applicant from being recognized as a citizen. It took note of documentary evidence indicating this, as well as other evidence provided by the Applicant. However, the RAD then moved further along the *Tretsetsang* test and considered whether the Applicant took reasonable efforts to overcome the impediments.

[30] The RAD found on the facts before it that the Applicant's position as to his inability to assert his citizenship rights was speculative, and that the Applicant was obligated under *Tretsetsang* to take reasonable measures to overcome the impediments he identified. The RAD's finding was reasonable in light of the evidence.

[31] Additionally, the Applicant states that the RAD wrongly assumed that the Applicant is able to apply for citizenship while in Canada. However, the RAD observed that the Applicant "did not contact the Indian Consulate in Toronto or the High Commission of India in Ottawa for information" and that he did not consider "doing an online application or researching whether he could apply online". The RAD's point is not that the Applicant should have applied from Canada, but that he should have taken reasonable efforts to inquire as to his ability to assert citizenship rights while in Canada. The RAD did not err in making this observation.

[32] The RAD's application of the law was reasonable.

C. *Country of Reference*

[33] The Applicant argues that the RAD was wrong to find that India is “the country of reference”. He states that the correct country of reference is China. The Applicant further states that, in making this error, the RAD disregarded the fact that the Applicant is not able to acquire actual proof of citizenship, that Indian authorities discriminate against him and other Tibetans, and that he could be deported to China under Indian law.

[34] The Applicant’s position presents several issues. It implicitly suggests that there can only be one country of reference on a claim for refugee protection, and that the RPD and the RAD selected the wrong country to frame its analysis. It is well established that several countries can be the countries of reference, particularly where the claimant has citizenship rights in more than one country. In such cases, the claimant must satisfy the IRB that he is a Convention refugee or a person in need of protection with respect to each country (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 751).

[35] The RPD and the RAD did not select one country of reference to the exclusion of another. Rather, both determined that the Applicant is an Indian citizen. Therefore, his claim must show that he is a Convention refugee or a person in need of protection in relation to India. Because the Applicant did not allege any persecution or need of protection with respect to India, the mere finding that he is a citizen, and the failure of the Applicant to show that he is unable to be recognized as such, disposed of his claim. It was not necessary for the RPD or the RAD to assess

the claim further in relation to China (*Martinez Cabrales v Canada (Citizenship and Immigration)*), 2019 FC 1178 at para 53).

[36] Moreover, the premise of the Applicant's argument rests on the same submissions he made as to his citizenship and the proper application of the *Tretsetsang* test. Namely, he argues again that the RAD disregarded that, while the Applicant may be *deemed* a citizen in India, he does not enjoy the benefits of citizenship. I have already found that the RAD's position on these issues is reasonable.

[37] Accordingly, the RAD's conclusion that India is a country of reference is reasonable.

VI. Conclusion

[38] The application is dismissed.

JUDGMENT in IMM-4807-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4807-22

STYLE OF CAUSE: TSERING PALJOR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 29, 2024

JUDGMENT AND REASONS: MANSON J.

DATED: FEBRUARY 12, 2024

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