

Federal Court



Cour fédérale

Date: 20240222

Docket: IMM-4157-22

Citation: 2024 FC 293

Ottawa, Ontario, February 22, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

AHMAD HASSAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Ahmad Hassan (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), confirming the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”). In its decision, the RPD found that the Applicant is not a Convention refugee nor a person in need of

protection within the scope of section 96 or subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of Pakistan. He alleged a fear of persecution from the Taliban and the Tehreek-e-Taliban Pakistan (the “TTP”). He claimed that his father received threatening phone calls about his participation in the game of squash; this game is viewed as a “Western activity” by the TTP.

[3] The RPD found that an Internal Flight Alternative (“IFA”) is available to the Applicant in Hyderabad.

[4] The RAD conducted an independent review. It sent a Procedural Fairness Letter to the Applicant, inviting submissions about perceived inconsistencies in the Applicant’s evidence. The Applicant responded through counsel.

[5] The RAD was not persuaded that the Taliban or the TTP was an agent of persecution. It found that the Applicant had failed to rebut the availability of an IFA.

[6] The decision of the RAD is reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[7] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra* at paragraph 99.

[8] The test for an IFA was set out by the Federal Court of Appeal in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 at 710-711 (F.C.A.):

- First, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA.
- Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.

[9] The RAD considered both prongs of the IFA test.

[10] Considering the evidence contained in the Certified Tribunal Record and the submissions, both written and oral, of the parties, I am not satisfied that the decision is reasonable.

[11] The RAD’s key finding was that the Applicant had not established the identity of his alleged agents of persecution.

[12] To support his belief that the threatening phone calls came from the Taliban or the TTP, the Applicant alleges that his brother was kidnapped by one of these groups.

[13] The RAD found that the Applicant was not credible in this allegation based on perceived inconsistencies between his testimony, the letter of support from his father, and the newspaper article describing the event. In my opinion, this was an unreasonable credibility finding.

[14] In my opinion, it is unintelligible how the father's failure to mention the use of a weapon in the alleged kidnapping rendered his description of the event inconsistent with the Applicant's testimony.

[15] Similarly, the RAD found that the newspaper article was inconsistent with the Applicant's testimony because it referred only to his brother's disappearance and did not refer to the incident as an abduction. Again, in my opinion, it is unintelligible how the RAD concluded that this was inconsistent with the Applicant's testimony.

[16] The RAD's analysis at the first prong of the IFA test is therefore unreasonable. It is not necessary to address the second prong of the test.

[17] The application for judicial review will be allowed, the decision of the RAD will be set aside and the matter remitted to a differently constituted panel of the RAD for redetermination. There is no question for certification.

JUDGMENT IN IMM-4157-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Refugee Appeal Division is set aside and the matter is remitted to differently constituted panel for redetermination. There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4157-22

STYLE OF CAUSE: AHMAD HASSAN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 18, 2024

REASONS AND JUDGMENT: HENEGHAN J.

DATED: FEBRUARY 22, 2024

APPEARANCES:

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