

Federal Court



Cour fédérale

Date: 20240222

Docket: IMM-1524-22

Citation: 2024 FC 295

Ottawa, Ontario, February 22, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MOHAMMED FAREED UDDIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Mohammed Fareed Uddin (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), dismissing his appeal from the Immigration and Refugee Board, Refugee Protection Division (the “RPD”). The RPD had dismissed his claim for refugee protection.

[2] The Applicant is a citizen of India, from the city of Hyderabad. He is a Muslim. He arrived in Canada as a visitor, holding a visa, on May 13, 2019. His application for protection was received on July 8, 2019.

[3] The Applicant alleged a fear of persecution from cow protection groups, the Bharatiya Janta Party and the police, because his brother had been harassed and accused of selling cow meat at his butcher shop. He also alleged that he was detained and tortured by the police when he took steps to find his brother, who had been missing since 2018.

[4] The RPD dismissed the Applicant's claim on the grounds that Internal Flight Alternatives ("IFAs") were available in the cities of Lucknow or Varanasi.

[5] The Applicant attempted to submit new evidence before the RAD. The evidence was rejected and the Applicant now argues that the RAD committed a reviewable error by not accepting the new evidence, in particular the Human Rights Watch article dated January 2021.

[6] The Applicant also submits that the RAD misunderstood the evidence in the National Documentation Package (the "NDP") about the availability of IFAs and that it relied on outdated information in concluding that the police did not have the means to find him in the proposed IFA locations.

[7] Finally, the Applicant argues that the RAD engaged in speculation in finding that he was less at risk from the cow protection groups because he is not a butcher.

[8] The Minister of Citizenship and Immigration (the “Respondent”) objects to the inclusion of certain evidence in the affidavit of the Applicant, filed in support of this application for judicial review. He argues that this evidence is inadmissible because it was not before the RAD, and should be ignored by this Court.

[9] The Respondent then submits that although the Human Rights Watch article was only incorporated in the NDP in June 2021, it was published on March 28, 2020 and was reasonably available. The RAD’s decision not to admit this article as new evidence was reasonable.

[10] The Respondent argues that in his remaining arguments, the Applicant is asking the Court to reweigh the evidence and to reach a different conclusion about the IFAs. He submits that the RAD acknowledged evidence that shows mistreatment of Muslims by police but the RAD also found that the mistreatment was not so pervasive as to make the IFAs unviable.

[11] The Respondent also argues that the RAD reasonably concluded, based on the NDP, that the police in India have limited ability to trace someone across the nation.

[12] The merits of the decision, that is the IFA findings, are 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.).

[13] I am not persuaded that the RAD erred in refusing to admit the new evidence tendered by the Applicant because this evidence was available before the RPD hearing of his claim.

[14] 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.

[15] Considering the material in the Certified Tribunal Record, as well as the written and oral submissions of the parties, I am satisfied that the RAD reasonably considered and applied the two-pronged test for an IFA.

[16] From its reasons, it appears that the RAD weighed the evidence in the NDP and concluded that the persons feared by the Applicant, in particular the police, would not have the means or the motivation to pursue him in the proposed IFAs. While it acknowledged the risk to Muslims, it found that it was not sufficient to render the IFAs unviable.

[17] The Applicant has not challenged the RAD's findings on the second prong of the test.

[18] In the result, this application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-1524-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1524-22

STYLE OF CAUSE: MOHAMMED FAREED UDDIN v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 22, 2023

REASONS AND JUDGMENT: HENEGHAN J.

DATED: FEBRUARY 22, 2024

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