

Federal Court



Cour fédérale

Date: 20240617

Docket: IMM-11553-22

Citation: 2024 FC 922

Ottawa, Ontario, June 17, 2024

PRESENT: Madam Justice McDonald

BETWEEN:

**MIRZA AFZAL BAIG
AMEERA AFZAL
MIRZA SUFYAN BAIG
AYAT AFZAL
MIRZA RAYYAN BAIG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Baig family are citizens of Pakistan and Shia Muslims who sought refugee protection in Canada. The Refugee Appeal Division [RAD] accepted that the family received threatening

phone calls for extortion from the organization, Lashkar-e-Jhangvi (LeJ) but determined that the family could safely relocate within Pakistan to the city of Islamabad. On this judicial review, the Applicants argue that Islamabad is not a viable option for them because LeJ has both the means and the motive to find them in that city. They argue that the Principal Applicant and the father of the family, Mirza Afzal Baig, is a high profile individual and would come to the attention of the LeJ. They also argue that it is unreasonable for them to relocate to Islamabad as the country condition evidence indicates they will continue to face violence in that city.

[2] I am dismissing this application because I have found the decision of the RAD to be both reasonable and supported by the evidence.

I. Preliminary issues

[3] As a preliminary issue, legal counsel for the Respondent objected to the Court for considering the 2024 version of the national documentation package [NDP] extensively referenced in the Applicants' written submissions. They objected because that was not the version of the NDP considered by the RAD. While Applicants' legal counsel claims that the NDP version did not materially differ, as a rule, the Court, on judicial review, does not consider evidence that was not before the RAD. At the hearing, I ruled that I would not consider the 2024 version of the NDP referenced by the Applicants.

[4] The Respondent also objected to what they characterize as new legal arguments on "mixed motives" raised by the Applicants in their May 2024 submissions. The Respondent

argues that the Applicants did not raise this in their written submissions filed at the leave stage. In response, legal counsel for the Applicants points to their Basis of Claim (BOC) where financial and religious motivations on the part of the agent of persecution is raised. Given this foundation, I allowed Applicants' counsel to make submissions on the mixed motives grounds.

II. Issue and standard of review

[5] The Applicants acknowledge that the RAD identified the applicable internal flight alternative [IFA] considerations from *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA). The issues raised by the Applicants relate to the RAD's application of the IFA considerations, namely:

- A. Does LeJ have the means and motivation to find the Applicants?
- B. Is it reasonable for the Applicants to relocate to Islamabad?

[6] The Applicants acknowledge that reasonableness is the applicable standard of review. In reviewing the RAD decision, the Court must ask “whether the decision 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” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

III. Analysis

A. *Does LeJ have the means and motivation to find the Applicants?*

[7] The Applicants argue that Mr. Baig would be perceived as a “high profile individual” as he is an internationally successful IT professional. They note his education credentials and the fact that he is employed as a hardware engineer. They claim Mr. Baig would be perceived as a wealthy Shia professional and would, therefore, be a target. They also argue that the RAD engaged in speculation when it concluded that the Applicants would not be a target because they lacked a prominent profile.

[8] In considering Mr. Baig’s profile, the RAD consulted the NDP and considered the evidence filed by the Applicants. The NDP notes that it is “prominent Shia professionals and officials” who were at risk of targeted killings. Having found a lack of evidence to establish that Mr. Baig was prominent or that he would be perceived as wealthy or prominent, the RAD concluded he would not be a target because he did not fit the profile. This finding is grounded in the evidence before the RAD and is, therefore, a reasonable finding.

[9] In addition, there was no evidence before the RAD to show that LeJ had any continued interest or motivation to seek out the Applicants, as there was no evidence that the LeJ tried to contact them after the December 2017 extortion phone calls. Further there was a lack of evidence to link the extortion demand to the Applicants’ faith as Shias.

[10] The submissions made by the Applicants is that all Shias are at risk of being targeted by the LeJ in Islamabad. However, this is not supported by the NDP evidence referenced by the RAD noting that the risks of Shias being targeted in Islamabad was minimal.

[11] The Applicants also argue that the use of tenant registration systems would provide a means for LeJ to locate them. The RAD accepted the possibility that LeJ might be able to track down a target with the help of other like-minded terrorist organizations; but given the lack of evidence showing that LeJ had any ongoing motivation to pursue the Applicants, the RAD did not consider this a risk. The RAD noted a lack of evidence to support an ongoing motivation to pursue the Applicants as there were no attempts to contact them or known attempts to locate them after the extortion calls in December 2017.

[12] On the ability of LeJ to track them through social media, the Applicants argue that it is unreasonable to expect that their three young children will not use social media. They argue that their circumstances are similar to those in *Marimuthu v Canada (Citizenship and Immigration)*, 2022 FC 1694 [*Marimuthu*] where it was acknowledged that state and national government forces generally have little difficulty in finding an individual's address (*Marimuthu* at paras 48-50). The Applicants argue that LeJ should be viewed in a similar manner and, therefore, the Applicants cannot keep information about their whereabouts private from the agent of persecution. However, in *Marimuthu*, the state itself was the persecutor. The state is not the persecutor in this case.

[13] This case is more similar to *Hassan v Canada ((Citizenship and Immigration), 2023 FC 1375 [Hassan]* where Justice Ahmed concluded that “there was insufficient evidence to demonstrate that the LeJ has the ability to use social media or the Internet to track a person’s exact location” (para 41). In this case the RAD considered the Applicants’ argument that modern technology could be used to locate them but found that the Applicants had not demonstrated with evidence *how* their personal information would end up being publicly available or be used to locate them.

[14] In sum, the Applicants have not established that the RAD was unreasonable in its consideration of the first prong of the test for the IFA analysis. The RAD reasonably found that the Applicants did not face a serious possibility of persecution in Islamabad. The RAD did not ignore evidence, mischaracterize the Applicants’ profile status, or otherwise fail in its assessment of the evidence.

B. *Is it reasonable for the Applicants to relocate to Islamabad?*

[15] The Applicants argue that they will not be able to safely practice their religion in Islamabad. They submit that the RAD relied on selective evidence. They refer to information submitted by the Minority Rights Group International [MRG] in Pakistan stating that “Shi’a are still regarded as apostates by some extremist Sunni groups and individuals” and information submitted in the 2022 Australian Government Department of Foreign Affairs and Trad report indicating that LeJ is “a radical Sunni militant group” seeking to “eradicate Shi’a influence from Pakistan” and that LeJ has conducted “numerous deadly attacks on Shia communities.”

[16] The RAD considered the Applicants' arguments as well as the objective evidence to conclude that Shia Muslims worshiped and participated in religious practices in Islamabad and, therefore, the Applicants would not have to hide while practicing their faith.

[17] Finally on the Principal Applicant's health conditions, the RAD considered the medical reports but found that they did not establish that he had a disease that would prevent him from travelling. Further, the reports were six months old, and no updated information had been provided nor was there any evidence that the Principal Applicant would not be able to get treatment for his medical condition in Pakistan. The RAD considered the medical reports submitted by the Applicants and reasonably concluded that this did not prevent him from relocating to Islamabad.

IV. Conclusion

[18] The RAD decision is reasonable; therefore, this judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT IN IMM-11553-22

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

: IMM-11553-22

STYLE OF CAUSE: BAIG ET AL V THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 23, 2024

JUDGMENT AND REASONS: MCDONALD J.

DATED: JUNE 17, 2024

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