Federal Court  Cour fédérale

Date: 20250116

Docket: IMM-9687-22

Citation: 2025 FC 87

Ottawa, Ontario, January 16, 2025

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SUMIT KUMAR AHLAWAT, ABHEER SINGH AHLAWAT, REENA AHLAWAT

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, citizens of India, seek judicial review of the September 9, 2022 Decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board upholding the conclusion of the Refugee Protection Division [RPD] that they are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27. The determinative issue was the availability of internal flight alternatives [IFA].

[2] Having considered the Applicants' arguments, I am not persuaded that the IFA analysis is unreasonable or that the Court's intervention is warranted on any other ground. The Application is dismissed for the reasons that follow.

II. Background

[3] The Applicants, Sumit Kumar Ahlawat [Principal Applicant or PA], his wife, Reena, and their minor child report they fear the Bharatiya Janata Party (BJP) and the local Haryana police in India. The Principal Applicant was a supporter of the Indian National Lok Dal (INLD) party and was known in his community for his political involvement; he publicly voiced his opinion on issues including the arrest of the INLD party leader.

[4] The BJP reportedly attempted to recruit the PA and sought to have him use his influence to convince others to join the BJP; he refused. The BJP began to harass and threaten him. He reports that BJP supporters assaulted him and that they also threatened to kidnap his wife and child.

[5] In February 2019, one of the PA's tractors was taken by an employee and later found abandoned with undefined incriminating material inside. The PA reports local police arrested him, accusing him of providing transportation to certain anti-national elements. The police detained the PA for one day, during which time they reportedly tortured and interrogated him.

He was released upon payment of a bribe after having been fingerprinted and signing a blank document. He was also expected to return to the police station when required as the police were purportedly investigating the incident with the tractor. The PA later returned to the police station and was shown photos of suspected militants and criminals.

[6] In April 2019, the Applicants fled to New Delhi but could not settle fearing the PA's prior arrest would turn up if they were to register as tenants. They then arranged with an agent to flee India, arriving in Canada in July 2019. The Applicants report that the local police and BJP members continue to inquire as to their whereabouts.

[7] The RPD found the PA's narrative to be credible, but determined an IFA was available to the Applicants in Mumbai, Delhi and Jaipur.

III. Decision under review

[8] In confirming the RPD's decision, the RAD cited *Rasaratnam v Canada (Minister of Employment and Immigration) (CA)* (1991), [1992] 1 FC 706, 1991 CanLII 13517 [*Rasaratnam*] in setting out the two-prong IFA test. The RAD then addressed the Applicants arguments that the RPD erred in considering the first prong of the test.

[9] The RAD concluded the Applicants had failed to demonstrate a serious possibility of persecution in the identified IFA, finding it to be more likely than not that the PA's situation did not represent the kind of "major crime" that would motivate a local police force in India to engage in interstate communications to locate the Applicants in another state. In other words, the

RAD concluded the evidence did not demonstrate the Haryana police would be motivated to track the Applicants in the proposed IFAs.

[10] Having concluded the evidence did not establish the agents of persecution were motivated to locate the Applicants, the RAD held that it was not necessary to consider whether the agents of persecution had the means to do so. However, the RAD nonetheless undertook this part of the analysis for reasons of completeness.

[11] In considering means, the RAD concluded the RPD correctly found that local police would not have the means to locate the Applicants in the proposed IFAs through the Crime and Criminal Tracking Network System [CCTNS] database or through India's tenant registration system. There was no evidence that the PA's detention would have triggered a CCTNS entry, a First Information Report (FIR) had not been registered against the PA, and he was released upon payment of a bribe. It was also therefore unlikely that a tenant verification check that involved consulting the CCTNS database would identify the PA. The RAD also noted the documentary evidence, which states that the actual verification of tenant backgrounds with the police in a tenant's home state is very limited – police are ill equipped and short staffed, and a former Delhi commissioner had stated police did not make efforts to follow up with the concerned police in other states.

IV. Issues and standard of review

[12] The Application raises a single issue – is the RAD's IFA decision reasonable? The Applicants submit it was not, arguing the RAD erred by:

A. misinterpreting the IFA concept in circumstances where the alleged agents of persecution are state agents;

B. adopting the wrong legal standard in finding IFAs were available;

C. unreasonably concluding the Applicants failed to demonstrate local police motivation to pursue them in the IFA; and

D. refusing to consider evidence.

[13] The parties agree that the appropriate standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]). A reasonable decision is one that bears the hallmarks of justification, transparency, and intelligibility (*Vavilov* at para 99). Review on a reasonableness standard involves the exercise of judicial restraint and demonstrates a respect for the distinct role of the administrative decision maker, but is a robust form of review (*Vavilov* at para 13). The party challenging a decision is required to satisfy the Court that the decision suffers from shortcomings that are more than merely superficial or peripheral to the merits of the decision (*Vavilov* at para 100).

V. Analysis

A. *The RAD reasonably undertook an IFA analysis*

[14] The Applicants rely on *Buyuksahin v Canada (Minister of Citizenship and Immigration)*, 2015 FC 772 [*Buyuksahin*] in arguing that this Court's jurisprudence stands for the principle that an IFA analysis is inappropriate where the agent of persecution is the state and that, in such circumstances, the burden of demonstrating an IFA is available shifts to the party asserting there

is an IFA (*Buyuksahin* at paras 29 and 30). The Respondent argues that this Court has routinely upheld IFA determinations where the local Indian police are identified as an agent of persecution and applicants have failed to establish they posses a profile indicating that local police would have an interest in tracking them within a proposed IFA, the very circumstances that arise in this instance (see for example *Madaan v Canada (Minister of Citizenship and Immigration)*, 2023 FC 1216 at para 41).

[15] Noting the jurisprudence cited by the parties and assuming the RAD's profile conclusions – addressed below – were reasonable, I am not persuaded that it was unreasonable for the RAD to engage in an IFA analysis.

[16] That said, this issue was not before the RAD. The Applicants' written submissions to the RAD raised only two matters (1) whether the RPD applied the wrong legal standard in considering the first prong of the IFA test, and (2) were certain of the RPD's conclusions speculative. The appropriateness of the RPD undertaking an IFA analysis was not argued before it. Nor does it appear that this issue was raised before the RPD.

[17] During the hearing, the Court raised the question of whether this issue, one that is factually and legally distinct form those that were considered by the RAD (i.e. whether the IFA analysis was correct), was properly before it on judicial review.

[18] In *Singh v Canada (Citizenship and Immigration)*, 2023 FC 875, Justice Yvan Roy helpfully and comprehensively considered the propriety of a reviewing court considering matters

on judicial review that were not before the decision maker. As was noted by Justice Roy, for a court to be in the position to undertake reasonableness review on the *Vavilov* standard, there must be a decision to review (*Singh* at para 53). Judicial intervention on grounds that go beyond those before the decision maker would require a reviewing court to delve into the merits of the matter. This is generally not the role of the Court on judicial review.

[19] I therefore decline to further consider whether an IFA analysis was appropriate in this case.

B. *The RAD did not adopt the wrong legal standard within the first prong of the IFA test*

[20] The Applicant argues that the RAD's repeated use of the terms "balance of probabilities" and "likelihood" raises the question of whether the RAD required the Applicants to demonstrate a risk of persecution within the IFAs on the "balance of probabilities" standard instead of the "serious possibility" standard as provided for within the first prong of the IFA test (*Thirunavukkarasu v Canada (Minister of Employment and Immigration) (CA)* (1993), [1994] 1 FC 580, 1993 CanLII 3011 [*Thirunavukkarasu*]).

[21] The Applicants rely on *Halder v Canada (Minister of Citizenship and Immigration)*, 2019 FC 922 at para 46 [*Halder*] and *Gomez Dominguez v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1098 at paras 30 and 31 [*Dominguez*], as examples of cases where the RAD has conflated findings of fact, to be established on a balance of probabilities, with a means and motivation analysis involving an assessment of risk on the serious possibility standard.

[22] While I take no issue with the *Halder* or *Dominguez* decisions, this case is readily distinguished from both. In *Halder*, the RPD expressly required the applicants prove the agent persecution would locate the applicants in the IFA (*Halder* at para 46). In *Dominguez*, the overall risk of persecution within the IFA was not independently assessed in a context where many of the established facts, proven on a balance of probabilities, highlighted the alleged risk of persecution.

[23] Having undertaken a careful reading of the decision in this case, I am satisfied that the RAD did not conflate the standard to be applied to findings of fact with the serious possibility standard applicable to the assessment of the risk of persecution within the IFAs. The RAD clearly and correctly articulated the first prong of the IFA test in the section immediately preceding its determinative conclusion that the local police were not motivated to locate the Applicants in the IFAs. In addition, the RAD reached its motivation conclusion within a constellation of cited facts and circumstances that are consistent with the RAD's motivation conclusion and ultimate risk assessment. The RAD noted that the National Documentation Package [NDP] confirmed little interstate communications between police except for cases of major crime, that the Applicants had not challenged the RPD's findings that the PA did not have a profile that would motivate the police to use interstate resources to locate him in the IFA cities, no FIR had been filed against the PA, the PA had been released without charge on a bribe, and that no efforts had previously been made to track the Applicants to relatives in New Delhi.

[24] The Applicants' argument that "we cannot be sure that the RAD was using the test in Thirunavukkarasu" is not persuasive in this circumstance.

C. *The RAD reasonably concluded that the Applicants failed to demonstrate motivation to pursue them in the IFA*

[25] The Applicants argue, citing *Athwal v Canada (Minister of Citizenship and Immigration)*, 2024 FC 672 that to demonstrate police motivation to pursue them in the IFA, they were required to demonstrate either that they have a criminal record in India, that they have been charged with a crime, or that they are wanted as a person of interest in connection with an investigation. They argue that this test was met, the PA having testified that he was a person of interest in an investigation, anti-national material had been found in a vehicle he owned, he had been arrested, and his release was subject to a requirement that he return to the police station when required. The Applicants submit that having accepted the PA's evidence, the RAD was required to provide cogent reasons as to why these facts were insufficient to demonstrate a motivation to pursue the Applicants in the IFAs.

[26] I disagree. While the Applicants might take a different view of, or assign different weight to the evidence, this does not render unreasonable the RAD's finding that the Haryana police did not seriously believe the PA was connected to anti-national activities. The RAD provided cogent and fulsome reasons in support of its conclusion.

D. *The RAD did not refuse to consider evidence properly before it.*

[27] The Applicants submit the RAD inappropriately relied on the "spotty implementation" of surveillance laws to conclude there was no serious possibility of persecution in the IFAs. They

further submit that the RAD improperly failed to consider evidence in the NDP relating to arrest powers in India. Neither argument is persuasive.

[28] The "spotty implementation" of surveillance laws arises in the context of the RAD's means analysis. This analysis was not determinative; the RAD having reasonably concluded that motivation to locate the Applicants had not been demonstrated.

[29] With respect to the NDP evidence, the RAD addressed the Applicants' submissions as they related to this evidence and noted the document in issue could not be located. The Applicants' assertions that the RAD somehow acted in bad faith in not seeking out the referenced report within the NDP is speculative and lacking in merit. The RAD considered the Applicants' submissions as they related to the mis-cited document but concluded it preferred other evidence within the NDP and set out the circumstances relied upon for doing so. This was both consistent with the RAD's role and reasonable in the circumstances. No error warranting judicial intervention arises.

VI. Certified Question

[30] The Applicants have proposed the following questions for certification:

1. What is the proper framework of IFA analysis where the agents of persecution are state agents? Is an IFA analysis appropriate at all in such a circumstance? Is it presumptively inappropriate? If so, how would such a presumption be rebutted?
2. What is the proper test to establish whether an agent of persecution has the "means" and "motivation" to persecute a claimant in a proposed IFA location? How does

this test interrelate with the test in *Thirunavukkarasu* (i.e. a serious possibility of persecution in the proposed IFA location)?

3. Is it appropriate for the RPD and the RAD to rely on spotty implementation of surveillance laws when conducting an analysis of the "means" of an agent of persecution to persecute a claimant in a proposed IFA location?

[31] The Respondent opposes the proposed questions, advising the Court that questions one and two were raised by counsel in *Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 and were found not to be appropriate for certification (paras 31-37 [*Vartia*]). I adopt the reasoning in *Vartia* in again refusing to certify questions one and two.

[32] Question 3 does not raise an issue that is dispositive of the Application and is refused on that basis (*Canada (Immigration and Citizenship) v Laing*, 2021 FCA 194 at para 11).

VII. Conclusion

[33] For the above reasons the Application is dismissed.

JUDGMENT IN IMM-9687-22

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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