

Federal Court



Cour fédérale

Date: 20250415

Docket: IMM-2758-24

Citation: 2025 FC 693

Ottawa, Ontario, April 15, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

KASHISH VERMA

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Kashish Verma [Applicant], is a citizen of India who alleges a fear of persecution in his country of origin. He seeks judicial review of a decision dated January 23, 2024, where the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD] rejected his refugee claim [Decision] on the grounds that he is not a refugee nor person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [IRPA]. The RAD confirmed the Refugee Protection Division [RPD] decision and found that the Applicant has a viable Internal Flight Alternative [IFA].

[2] For the reasons that follow, this application for judicial review is dismissed. The Decision sufficiently addressed the Applicant's arguments and considered his alleged persecution in the context of the IFA. I cannot find that the Decision is unreasonable.

II. Background and Decision Under Review

[3] In 2016, the Applicant witnessed the assault of his friend by a gang. His friend later died from the injuries sustained during the assault. The Applicant has been living in Canada since 2017 as a student.

[4] In 2019, the Applicant's mother was tricked into providing the Applicant's Canadian phone number to the father of his deceased friend. The father then allegedly called the Applicant accusing him of causing his son's death. The Applicant's mother alleges that since the Applicant moved to Canada, unidentified persons have been coming to her house asking about the Applicant's whereabouts. The Applicant alleges that the Jalandhar police continues to contact his mother inquiring about his whereabouts. He also states that his mother has been informed that the Jalandhar police recently alleged that the Applicant is associated with Khalistan militants in Canada.

[5] The Applicant states that he fears returning to India, as he believes he has been falsely accused of his friend's death and will be subject to a risk to his life, to cruel and unusual treatment or punishment or to danger of torture.

[6] On July 31, 2023, the RPD rejected the Applicant's claim, and his *sur place* claim. The RPD found that the Applicant is not a Convention refugee nor a person in need of protection and that his removal would not subject him to a risk to his life or to a risk of cruel and unusual treatment.

[7] On appeal to the RAD, the Applicant submitted that his IFA was unreasonable because the Jalandhar police's consistent attendance at his mother's home will force her to disclose his location. On January 23, 2024, the RAD confirmed the RPD's decision, finding that on a balance of probabilities, there was no evidence that his mother would disclose the Applicant's location. The RAD found that the agents of persecution did not have the means and motivation to locate him. It found that his family will not be how the authorities would locate the Applicant at the IFA. The RAD's decision is the subject of this judicial review.

III. Issues and Standard of Review

[8] The issue on judicial review is whether the RAD's Decision was unreasonable.

[9] The parties submit that the standard of review with respect to the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25). I agree that reasonableness is the applicable standard of review.

[10] On judicial review, the Court must consider whether a decision bears the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[11] A claimant has an IFA when (1) they will not be subject to a serious possibility of persecution nor to a risk of harm under sections 96 and 97 of the IRPA in the proposed IFA location and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances. Both prongs need to be satisfied to conclude that a claimant has an IFA (*Bassi v Canada (Citizenship and Immigration)*, 2024 FC 910 at paras 15-16 [*Bassi*] citing *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at pp 597-598) [*Thirunavukkarasu*]).

[12] With respect to the first prong of the IFA test, an applicant must demonstrate that the proposed IFA is unreasonable because they fear a possibility of persecution throughout their entire country. An applicant must establish that the agents of persecution have both the means

and the motivation to cause harm on a prospective basis (*Bassi* at para 17, other citations omitted).

[13] The threshold on the second prong of the IFA test is a high one. There must be “actual and concrete evidence” of conditions that would jeopardize an applicant’s life and safety in travelling or temporarily relocating to a safe area. Once the potential for an IFA is raised, the applicant bears the onus of establishing that it is not viable (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 9 [*Olusola*] citing *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 at para 15 and *Thirunavukkarasu* at pp 594-595). If a claimant has a viable IFA, this will negate a claim for refugee protection under either section 96 or 97 (*Olusola* at para 7).

[14] The Applicant states that the RAD erred in its analysis when concluding that the Applicant’s agent of persecution does not have the means and motivation to locate him in the IFA location. The Applicant submits that the RAD unreasonably interpreted the leading cases *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*] and *AB v Canada (Citizenship and Immigration)*, 2020 FC 915 [*AB*] regarding the persecutors means to locate the Applicant in the IFA in the first prong. The Applicant explains that contrary to the RAD’s interpretation of those decisions, harm, threats or violence by the agent of persecution is not necessary to conclude that the family member’s life is in danger and render the IFA unreasonable. The Applicant argues that in his case, the Applicant’s mother’s past disclosure of his location and the repeated visits to her home are sufficient to establish the means and motivation (citing *Bhuiyan v Canada (Citizenship and Immigration)*, 2023 CF 410 [*Bhuiyan*]).

[15] Further, the Applicant argues that the RAD engaged in a microscopic analysis of the evidence. The RAD erroneously found that because the Applicant's mother had not been threatened by the Jalandhar police in any way, she is unlikely to voluntarily disclose information about his son's whereabouts. It was also unreasonable for the RAD to require harm, threats or violence in order to conclude that mother's life was in danger. The RAD ought to have assessed the issue of whether the Applicant would need to hide his location from his mother by determining whether the established facts point to a conclusion that she fears for her life by concealing her son's whereabouts.

[16] On the other hand, the Respondent states that the case law has already stated that mere questioning is not enough to justify the agent of persecution has the requisite means and motivation. The Respondent distinguished the cases cited by the Applicant noting that in each of those cases, there was evidence that the family members were either assaulted or directly threatened by the agents of persecution. The approach taken by the RAD accords with this Court's case law, that is a fact-specific assessment. Claimants must not only prove that agents of persecution can contact their family, but also that they are motivated to threaten or endanger said the family to obtain a claimant's location (citing *Singh v Canada (Citizenship and Immigration)*, 2024 FC 614 at para 20, *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1151 at para 17, *Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 24; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1211 at paras 33-34; *Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557 at para 53).

[17] The Respondent submits that *Ali* and *AB* are not the “leading cases” as the Applicant asserts regarding persecution through family members. This Court’s jurisprudence since *Ali* and *AB* has clarified these cases. Additionally, the Respondent argues that the Decision is reasonable when read as a whole. Reading the decision holistically, there is a clear line of analysis that is logical and the RAD duly analyzed the record and submissions before it. According to the Respondent, the Applicant is asking the Court to reweigh the evidence on the question of means and motivation.

[18] The Applicant relies on *Bhuiyan*, *Ali* and *AB* in arguing that his mother cannot be reasonably expected to place her own life in danger by either denying knowledge of his whereabouts or directly misleading the agents of persecution. The Applicant states that the evidence has demonstrated that the agents of persecution have regularly visited his mother’s house for years, and that she fears for her life. The Applicant acknowledges that her evidence does not say on what basis she has this fear. However, he states that a threat or harm against her should not be a pre-requisite to demonstrate the agents’ motivation to locate him in the IFA (citing *Bhuiyan* at paras 26-27).

[19] With respect, I disagree with the Applicant’s characterization of *Bhuiyan*, *Ali* and *AB*. The Court’s case law has, in fact, clarified the scope of these three cases as follows:

- A. The holdings in these cases are fact-specific and cannot be generalized to every IFA situation. In *Bhuiyan*, *AB* and *Ali*, there was evidence that the applicants’ relatives would be in danger if they lied to the persecutors about the applicants’ whereabouts. There was also evidence that the persecutors had the capacity and willingness to pursue the applicants in their new locations based on the acquired information (*Singh v Canada (Citizenship and Immigration)* 2025 FC 459 at para 13 [*Singh* 2025], citing *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1211 at paras 32–37 [*Singh* 2023]; *Bassi v Canada (Citizenship and*

Immigration), 2024 FC 910 at para 26; *Nijjar v Canada (Citizenship and Immigration)*, 2024 FC 1501 at paras 32–34; *Chatrath v Canada (Citizenship and Immigration)*, 2024 FC 958 at paras 26-29; *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1290 at para 22; *Kodom v Canada (Citizenship and Immigration)*, 2023 FC 305 at para 13; *Aulakh v Canada (Citizenship and Immigration)*, 2023 FC 1176 at para 26; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1151 at para 17; *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1215 at para 24-25.)

- B. The fact that police is willing to visit the Applicant’s family does not demonstrate that they would be motivated to and capable of locating him outside of the state, which is what the Applicant has to demonstrate to meet the IFA test. The fact that an agent of persecution acquires knowledge of the Applicant’s whereabouts does not establish a risk if the agent is unable or unwilling to act on it (*Singh* 2025 at para 13).
- C. *Bhuiyan* does not stand for the proposition that once continued interest exists, means are established. The Court in *Bhuiyan* heavily engages with the facts and makes its ultimate conclusion on the RAD’s error in a factual context and not in a factual vacuum (*Singh v Canada (Citizenship and Immigration)*, 2024 FC 979 at paras 20, 24 [*Singh* 2024]).

[20] Justice Gascon also clarified a similar reliance on *Bhuiyan* in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1211 [*Singh* 2023]. In *Singh* 2023, the applicant relied on *Bhuiyan* for the proposition that even though his family members were not threatened by the police, the simple fact that they were questioned results in no IFA being viable, and that his family should not be expected to lie and put their life in danger when they are visited by the agents of persecution. Justice Gascon underlined that *Bhuiyan* and *Ali* were distinguishable, as these cases are fact-specific and cannot be generalized to every IFA situation. He also reiterated that the police’s mere knowledge of the whereabouts of the applicants in that case, assuming the families would disclose it, does not establish a serious possibility of persecution or risk in the proposed IFA if the police have neither the means nor the motivation to act on it (*Singh* 2023 at paras 32-38).

[21] *Bhuiyan, Ali* and *AB* cannot be used in a generalized way. The determination of each IFA case is fact specific. Based on the preceding overview, I do not find that the RAD erred in its review of the case law in the Applicant's case on means and motivation.

[22] Indeed, the RPD and the RAD must engage in a factual, contextual fact-finding exercise to assess whether the interactions between the agents of harm and the family would amount to sufficient evidence to establish the test in the first prong of the IFA test, namely whether those interactions establish that the applicants faced a serious possibility of persecution on a Convention Ground under section 96 of the IRPA or on a balance of probabilities a personal risk of harm under section 97(1) of the IRPA in the IFA (*Singh 2024* at para 23).

[23] The Applicant argues that the frequency of visits – not only the nature of the visits, were important. The Applicant states that the RAD failed to grapple with the frequency, choosing instead to focus on the nature of the visits.

[24] However, the evidence was clear that there was an absence of information about the nature of the visits. The Applicant's mother reported being questioned and "harassed" without any further details.

[25] The nature of the visits is an important factor in the context of the IFA analysis. In *Ali, AB* and *Bhuiyan* the evidence clearly demonstrated the extent to which the agents wished to locate an applicant, by credible and tangible threats or actual harm to family members. Here,

there was no evidence of threats, which the RAD indicated if there had, “could reflect on their motivation” to find the Applicant.

[26] Motivation is not necessarily confirmed by multiple visits, continued interest or disclosure of an applicant’s location. An applicant must also show that the agents will act on this information, which is consistent with the case law (*Singh 2025* at para 13). This is not an incorrect analysis of these cases and as described above in *Singh 2023*. What is required from the RAD is for it to assess the context of the visits and assess the motivation and means in that factual matrix. That is what the RAD did in the Applicant’s case.

[27] Given this, I cannot find that the RAD’s conclusion was unreasonable as it is justified based upon the factual and legal constraints that bear upon it.

V. Conclusion

[28] The application for judicial review is dismissed. The RAD’s Decision meets the hallmarks of reasonableness, being coherent and rational in its analysis of the evidence and arguments provided. The Decision was responsive to the Applicant’s submissions and is not unreasonable.

[29] The parties do not propose any question for certification and I agree that in these circumstances, none arise.

JUDGMENT in IMM-2758-24

THIS COURT'S JUDGMENT is that :

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

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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