

Federal Court



Cour fédérale

Date: 20250506

Docket: IMM-14831-23

Citation: 2025 FC 817

Ottawa, Ontario, May 6, 2025

PRESENT: Madam Justice Pallotta

BETWEEN:

SALEEM, MOHAMMAD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mohammad Saleem, is a citizen of Pakistan of Shia Muslim faith who fears persecution by a Sunni Muslim extremist group, Sipah-e-Sahaba (SSP), and its leader (MA). Mr. Saleem seeks judicial review of an October 30, 2023 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board that dismissed his appeal and confirmed the Refugee Protection Division's (RPD) decision that he is not a Convention refugee or a person in need of protection under sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Saleem is a musician. He claims that in the early 1990s he was harassed and threatened after he refused to perform at events sponsored by the SSP, and the police were unable to end the harassment. Mr. Saleem left Pakistan in 1994 to perform in New York. He decided to remain past his authorized visit after learning from his wife in Pakistan that SSP members were still making threats against him. Mr. Saleem spent the next 28 years in the United States.

[3] Mr. Saleem claims the SSP never lost interest in him. Mr. Saleem's wife died in a rickshaw accident in Pakistan in 2014, and he believes the SSP and MA were responsible for her death. Mr. Saleem left the US for Canada in March 2022. He made a claim for refugee protection in November 2022, which the RPD rejected on the basis that he has a viable internal flight alternative (IFA) within Pakistan.

[4] On appeal to the RAD, Mr. Saleem tendered an affidavit as new evidence. The RAD refused to admit paragraph 7 of the affidavit and one of the exhibits. The exhibit was a letter from the Ontario Disability Support Program (ODSP) that approved Mr. Saleem's application for income support, and the paragraph stated that Mr. Saleem suffers from health conditions and that the doctor who approved his ODSP application considered his ailments in granting the application for income support. The RAD found this evidence did not meet the statutory criteria for admitting new evidence on appeal, including because Mr. Saleem did not explain why it was not reasonably available before the RPD's decision. Furthermore, the RAD did not accept Mr. Saleem's contention that ODSP approval was relevant to establish that he has a disability

and would be unable to work to support himself in the IFA, and found that the letter was not relevant to the appeal.

[5] After considering the arguments on appeal and reviewing the evidence, the RAD found Mr. Saleem had not established that he would be unsafe in the IFA location or that it would be unreasonable to move there. The RAD found that the agents of persecution were not motivated to track and harm him in the IFA, and he had not established that he would be unable to work or receive treatment for his health conditions. The RAD concluded that Mr. Saleem is not a Convention refugee nor a person in need of protection because he has a viable IFA within Pakistan.

[6] Mr. Saleem submits the RAD's decision was unreasonable. He alleges the RAD erred by refusing to admit parts of his affidavit (paragraph 7 and the ODSP letter) as new evidence. He also alleges the RAD erred in assessing his son's affidavit evidence and other relevant evidence, and in assessing both prongs of the test for a viable IFA.

[7] Regarding the new evidence, Mr. Saleem states the RAD unreasonably excluded evidence which, even if it did not demonstrate a disability, showed that he is not working and is unable to support himself at his age.

[8] Mr. Saleem states it was unreasonable for the RAD to afford reduced weight to an affidavit from his son, which stated that MA and "some thugs from his group" threatened Mr. Saleem's wife the night before her death and continued to threaten his children after she

died. Mr. Saleem states the RAD erred by affording the evidence reduced weight because the affidavit was undated and his son did not have personal knowledge of the SSP's threats. The lack of a date did not provide a sufficient basis to discount the affidavit evidence and there was no reason to believe his son was not attesting to his personal knowledge of the threats. Mr. Saleem states the RAD also erred by giving little weight to a business card showing that MA owns a construction and engineering company with offices in different cities in Pakistan, including in the IFA.

[9] Mr. Saleem alleges that the RAD failed to apply the proper tests for assessing whether he would face a risk of persecution in the IFA location (first prong) and whether it would be unreasonable for him to move there (second prong). He asks the Court to set aside the RAD's decision.

[10] With respect to risk in the IFA location (first prong), Mr. Saleem alleges the agents of persecution have the motivation and the means to pursue him anywhere in the country, and he would face serious risks if he were to return to Pakistan. He submits the RAD erred by finding that the SSP was not responsible for his wife's death in Pakistan when there was evidence that the SSP threatened her the night before she died. Also, the RAD expected too much by requiring that the business card be attached to the son's affidavit, when the son had stated that MA had businesses all over Pakistan and that his father would not be safe anywhere in the country.

[11] With respect to whether it would be unreasonable to move to the IFA location (second prong), Mr. Saleem states the RAD did not consider his age and the impact it would have on his

ability to find work to support himself. The RAD also did not consider other personal circumstances that would render it unreasonable to move to the IFA, including that he has no family there and he suffers from medical conditions.

[12] The respondent contends Mr. Saleem has not established that the RAD committed any reviewable error, and his arguments amount to a disagreement with the RAD's findings and a request for the Court to reweigh the evidence. The respondent submits the RAD properly refused to admit evidence that did not meet the statutory requirements and found that admitting the evidence would not have changed the outcome in any event. With respect to the first prong of the IFA test, the respondent submits Mr. Saleem failed to establish that the agents of persecution are motivated to pursue him in the IFA location and the RAD reasonably concluded he had not met his burden. Similarly, the RAD reasonably concluded that Mr. Saleem failed to show it would be unreasonable for him to relocate to the IFA location, and Mr. Saleem has not established a reviewable error with the RAD's assessment under the second prong of the IFA test.

[13] The reasonableness standard of review applies to the Court's review of the merits of the RAD's decision. The guiding principles for reasonableness review are set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. It is a deferential but robust form of review that considers whether the decision, including the reasoning process and the outcome, is transparent, intelligible, and justified: *Vavilov* at paras 13, 99. A reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker: *Vavilov* at para 125.

[14] For the reasons below, I find Mr. Saleem has not established any errors that would warrant setting aside the RAD's decision.

[15] The RAD reasonably refused to admit the ODSP letter and paragraph 7 of Mr. Saleem's affidavit on the bases that the evidence did not meet the statutory requirements of *IRPA* subsection 110(4) or was not relevant. The RAD further found that admitting the evidence would not have altered the result, because it did not establish how Mr. Saleem's health conditions affect him or what treatment he requires. Mr. Saleem has not established any error with these findings.

[16] I am not persuaded that the RAD erred in its IFA assessment.

[17] On the first prong of the IFA test, the RAD reasonably concluded that Mr. Saleem had not met his burden to establish that the alleged persecutors were motivated to pursue him. Mr. Saleem claims that his persecutors threatened his wife the day before the rickshaw accident in 2014 and continued to threaten his children after she died. As the RAD noted, Mr. Saleem was not in Pakistan at the time, and he was relying on what his children told him. In this regard, Mr. Saleem provided an affidavit from his son.

[18] Mr. Saleem's son stated that MA and "other thugs from his group" had threatened his mother, and on the night before the rickshaw accident they threatened to kill her. He also stated that he reported the threats to the police. However, the RAD found that the son's affidavit evidence was inconsistent with the police report. The police report indicated that another of Mr. Saleem's children reported the accident, and the report did not mention any threats from the

SSP. The RAD preferred the evidence in the police report—an official document prepared at the time of the accident—and gave little weight to the son’s affidavit evidence that his mother was threatened the day before the accident and that he reported this to the police. Mr. Saleem has not established an error with these findings, and I agree with the respondent that the RAD reasonably concluded there was insufficient evidence to establish that the SSP was responsible for Mr. Saleem’s wife’s death.

[19] Mr. Saleem argues the RAD unreasonably discounted his son’s evidence that the SSP’s threats continued after his wife died. I disagree. The RAD noted that Mr. Saleem’s own evidence about the threats to his children was inconsistent, and while he has five children living in different cities and he is in contact with them, only one of his sons provided evidence. The RAD noted that the son’s affidavit did not indicate which children were threatened, when the threats were made, or where they were made. The son’s affidavit was undated, lacked particulars, provided no dates for the events described, and did not say whether the evidence was based on personal knowledge. In the absence of any particulars of the threats or any indication as to the source of the son’s knowledge, the RAD found that his evidence about the threats made after his mother’s death was too vague to be reliable. Mr. Saleem has not established an error with the RAD’s findings.

[20] With respect to the business card, the RAD noted that there was no evidence explaining who obtained the business card or how they obtained it, and no evidence establishing that the card was relevant to the question of motivation. The business card was proffered to show that MA had the means to locate Mr. Saleem in the IFA location, and it was unnecessary to address it

in view of the determinative finding on motivation. Nonetheless, the RAD found that the business card had low probative value. There was insufficient evidence to establish that the name on the business card was the same MA alleged to be an agent of persecution. Furthermore, Mr. Saleem never stated that the business would allow MA to locate him in the IFA, and the son's affidavit only stated that MA had businesses all over Pakistan—it provided no details or information about the businesses and did not state that the son had even seen the business card. I find Mr. Saleem has not established a reviewable error with any of these findings.

[21] Turning to the second prong of the IFA test, Mr. Saleem submits the RAD did not consider that he would be unable to find employment due to his age, and if he had to support himself by performing, he would always live in fear. Mr. Saleem also states that he has no family in the IFA location and he would not have any community support. The RAD recognized that relocation to the IFA may be difficult but found that Mr. Saleem had not established he would be unable to work by performing or teaching music, or that his health conditions would render the impact of relocation unduly harsh or unreasonable. I agree with the respondent that the RAD considered Mr. Saleem's concerns and reasonably found that they did not rise to the level of rendering the IFA objectively unreasonable, based on his particular circumstances.

[22] In oral argument, Mr. Saleem raised new challenges to the RAD's decision that were not in his written submissions. The arguments related to the RAD's interpretation of subsection 3(1) of the *Ontario Disability Support Program Act 1997*, SO 1997, c 25, Sched B, and the RAD's assessment of country condition evidence regarding the treatment of Shia Muslims in Pakistan. I

agree with the respondent that these new arguments should not be entertained. In any event, they are not persuasive.

[23] In summary, the RAD reasonably assessed the evidence, and I agree with the respondent that the RAD reasonably dismissed Mr. Saleem's appeal on the basis that he had not met his onus. The RAD's findings and conclusions are transparent, intelligible, and justified. Mr. Saleem's arguments amount to a disagreement with the RAD's findings, and a request to reweigh and reassess the evidence considered by the RAD, which is something this Court must not do on judicial review: *Vavilov* at para 125.

[24] As Mr. Saleem has not established a reviewable error that warrants setting aside the RAD's decision, I must dismiss this application. The parties did not identify a question for certification. I find there is no question to certify.

JUDGMENT IN IMM-14831-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-14831-23

STYLE OF CAUSE: SALEEM, MOHAMMAD v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 5, 2024

JUDGMENT AND REASONS: PALLOTTA J.

DATED: MAY 6, 2025

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