Federal Court  Cour fédérale

Date: 20250506

Docket: IMM-15135-23

Citation: 2025 FC 818

Toronto, Ontario, May 6, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

RAJMONDA MURATI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB].

[2] While I have found that several aspects of the RAD's decision were reasonable, I will grant this application for reasons set out below.

II. BACKGROUND

A. *Facts*

[3] The Applicant, Rajmonda Murati, is a citizen of Albania. Prior to coming to Canada, she lived in Tirana, the capital city of Albania, where she owned and operated a hair salon. She asserts a serious risk of harm in Albania after a man, known as L.G., began stalking her. Ms. Murati also asserts a well-founded fear of persecution on gender grounds, as an unmarried woman. The events that form the basis of her claim are as follows.

[4] In August 2021, L.G. began following the Applicant around the area where her hair salon is located. He made unwanted comments, advances, and sexual remarks to her. When Ms. Murati objected to this harassment, L.G. would become aggressive. She attempted to report him to the police, but they took no action.

[5] According to the Applicant's Basis of Claim narrative and her testimony, on August 28, 2021, L.G. grabbed the Applicant's arm and attempted to pull her towards him, but she managed to escape and reported the incident to the police. Once again, no action was taken.

[6] As a result, the Applicant, who had already been issued a Canadian visitor visa, decided to leave Albania until she felt it was safer. She traveled to Canada in October 2021. While in Canada, Ms. Murati was informed by her sister that L.G. continued to visit the hair salon, looking for her. As a result, she decided to extend her visitor visa, and then to make a claim for refugee protection.

[7] The Refugee Protection Division refused Ms. Murati's claim. The determinative issue was the availability of an internal flight alternative [IFA] in the city of Shkoder. The Applicant appealed to the RAD.

B. *Decision under Review*

[8] The RAD confirmed the RPD's conclusion that the Applicant has a viable IFA in Shkoder.

[9] As a preliminary matter, the RAD accepted new evidence submitted by the Applicant, which consisted of: an updated letter from her sister in Tirana; a psychologist's report regarding her mental health as it relates to her ongoing trauma; and country conditions evidence on sexual violence and other forms of gender-based violence in Shkoder.

[10] The RAD then found that the Applicant would not face a serious risk from L.G. in the proposed IFA, as he has neither the means nor the motivation to track and locate her in Shkoder. In coming to that conclusion, the RAD found that Ms. Murati had not produced any evidence that L.G. would have the means and influence to locate her in the IFA. Further, the RAD found that, while L.G. harassed Ms. Murati in the area around her hair salon, he never did so at her home, which was located only twenty minutes away from the salon. This, the RAD reasoned, demonstrated both a lack of capacity and a lack of motivation from L.G. to track and find Ms. Murati in the proposed IFA.

[11] The RAD acknowledged the Applicant's new evidence, namely, a letter from Ms. Murati's sister stating that L.G. continued to harass her, asking after Ms. Murati's whereabouts.

In the letter, the sister also stated that she told L.G. that Ms. Murati was in Canada, which angered him, and he stated: “whenever she returns she will have to face me either she likes it or not, she can’t escape me.” While the RAD accepted that L.G. did “inquire” about the Applicant after her departure, it found that it was not sufficient to establish that L.G. would locate her in the IFA. This was particularly the case because there was no evidence that L.G. sought out Ms. Murati using threatening means, at her residence, or through any other friends or family prior to her departure from Albania.

[12] The RAD also found that Ms. Murati would not have to go into hiding to relocate to the IFA, as there was no evidence that her sister was threatened or coerced into revealing her whereabouts. The RAD also found that the relative proximity between Tirana and Shkoder (approximately two hours) does not make it unreasonable or unsafe as an IFA.

[13] Further, the RAD found that the Applicant does not face a serious possibility of persecution on account of her gender, in Shkoder. It adopted the RPD’s reasons to conclude that neither the objective evidence nor Ms. Murati’s particular circumstances establish a serious possibility of gender-based persecution. The RAD considered the new evidence of gender-based violence in Shkoder, but found that while this is a problem in Shkoder, and that “discrimination, harassment, and violence against women occur in Albania,” it “could not conclude that the evidence establishes a serious possibility of persecution” for Ms. Murati.

[14] Finally, the RAD considered evidence of the Applicant’s ongoing PTSD, in support of her argument that the proposed IFA would be unreasonable in her particular circumstances. While the RAD accepted the Applicant’s subjective fear of returning to Albania and

acknowledged that such a return could exacerbate her PTSD symptoms, it found that there was insufficient evidence to establish that her condition was so severe that a return to Albania would jeopardize her "life or safety" as required by the jurisprudence.

III. ISSUES and STANDARD OF REVIEW

[15] The only issue in this matter is whether the RAD reasonably concluded that the Applicant has a viable IFA in Shkoder. The parties do not dispute that the applicable standard of review in assessing this issue is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*].

IV. LEGAL FRAMEWORK

[16] Refugee protection is an expression of the international community's commitment to protect individuals, in particular circumstances, who cannot obtain protection within their own country. Inherent in the concept of refugee protection, then, is that it is a backup or surrogate form of protection, and that it is only available to those who face risks in every part of their country of origin. The availability of a safe and viable internal flight alternative will therefore negate a claim for refugee protection: *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799.

[17] Canadian courts have a well-established jurisprudence on IFA principles. Reference to this jurisprudence typically starts with *Rasaratnam v Canada (Minister of Employment and Immigration)* (C.A.), 1991 CanLII 13517 (FCA), [1992] 1 FC 706 [*Rasaratnam*], which contemplated a two-part test for assessing the availability of an IFA in a particular location:

> First, there must be no serious possibility that the claimant will be persecuted, or subject to a personalized risk of torture, risk to life, or risk of cruel and unusual punishment in the identified IFA location.
>
> Second, it must not be unreasonable for the claimant to seek refuge in the IFA, considering all of their particular circumstances.

[18] A serious possibility of persecution, or a risk of torture, risk to life, or risk or cruel and unusual punishment can only be found if it is demonstrated that the agent of persecution has the probable means and motivation to seek out the asylum seeker in the proposed IFA location: *Nimako v Canada (Citizenship and Immigration)*, 2013 FC 540 at para 7; *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46, citing *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 43.

[19] In addition, in all the circumstances, including the Applicant's particular circumstances, the conditions in the proposed IFA must be such that it is not unreasonable for the Applicant to seek refuge there: see *Ranganathan v Canada (Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) at para 15 [*Ranganathan*]. The threshold to establish this unreasonableness is high, a topic to which I will return below.

V. ANALYSIS

[20] With one exception outlined below, I find the RAD's assessment of the first prong of the IFA test was generally reasonable. However, I will grant this application on the basis of the RAD's second prong reasonableness analysis.

A. *The First Prong Analysis – Generally reasonable with one exception*

[21] The RAD's assessment of the first prong of the IFA test was well-written in the sense that it was intelligible and transparent, and it was largely justified in light of the facts and law. I do, however, take issue with one of the RAD's findings related to the second letter from the Applicant's sister. Recall that in that letter, the sister stated that L.G. continued to visit the salon formerly owned by the Applicant to try and find her. At one point, he reportedly stated that "whenever she returns, she will have to face me either she likes it or not and that she can't escape."

[22] In considering this letter, the RAD stated in part: "While I accept that L.G. did inquire about the appellant after her departure, this is not sufficient to establish that L.G. would locate the appellant in the IFA." I am not convinced that the RAD's use of the word "inquire" reasonably captures the encounter between the Applicant's sister and L.G. While the letter does describe L.G.'s inquiry into Ms. Murati's whereabouts, the more consequential aspect of the letter was its description of the unambiguous threat conveyed by L.G. against the Applicant. While the reality may well be that this threat was of a local nature only, I find that it was important to consider it squarely, and on its own terms.

[23] Despite my concern with this aspect of the RAD decision, it may not have provided a sufficient basis, on its own, to grant this application. Nevertheless, as I will be remitting the matter back to the RAD, I thought it wise to comment on this concern, so that it is not replicated on redetermination.

B. *The Second Prong Analysis – Reasonableness and threats to life and safety*

[24] The Applicant argues that the RAD erred in failing to consider both evidentiary and legal issues related to the second prong assessment. I agree that the RAD's analysis of the second prong was in error, but for reasons somewhat different than those argued by the Applicant. In brief, I find that the RAD engaged in an overly constrained assessment of the reasonableness of the IFA location, based on a similarly constrained understanding of the prevailing jurisprudence.

(1) Principles

[25] My findings on the second prong of the RAD's analysis require a short review of the prevailing jurisprudence.

[26] In *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*], the Federal Court of Appeal devoted considerable attention to the content and meaning of the second prong of the IFA test, as first established in *Rasaratnam*. Referring also to the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* [UNHCR Handbook], the Court noted the flexibility of the IFA test, a flexibility which requires decision-makers to consider various factors particular to both the claimant and the country involved. On the reasonableness prong of the test, the Court suggested that the central question is: "would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the country before seeking refugee status abroad?" The Court continued by providing some tangible examples:

> For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to

> reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.

[27] Soon after, in *Kanagaratnam v Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1069 (1994) 83 F.T.R. 131, Justice Rothstein (as he then was) commented on the principles articulated in *Thirunavukkarasu*, noting as follows:

> I interpret Linden J.A.'s comments not to exclude the absence of friends or relatives or inability to find work as factors in the reasonableness consideration, but only that these factors alone would not make an IFA unreasonable.

[28] Six years later, in *Ranganathan*, the Federal Court of Appeal again considered IFA principles. The Court first expressed its agreement with Justice Rothstein in *Kanagaratnam* that the absence of relatives in the IFA location, while a relevant factor, does not (on its own) provide a sufficient basis on which to conclude that an IFA is unreasonable, because some hardship is always associated with the need to abandon the comfort of home to live in a different part of a country. This kind of hardship, the Court reasoned, is not the kind of undue hardship that Justice Linden had in mind in *Thirunavukkarasu*: para 14. The Court continued (at para 15):

> We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that

> threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.

[29] In arriving at this conclusion, the Court went on to identify two reasons why the threshold identified in *Thirunavukkarasu* should not be lowered. First, to implement a lower standard for protection under the second prong of the IFA test would necessarily delink it from the definition of refugee under the Refugee Convention, which "requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country." As the Court noted, to "expand and lower the standard for assessing reasonableness of the IFA is to fundamentally denature the definition of refugee" which, as noted above, is predicated on the presence of a well-founded fear of persecution throughout a claimant's country of origin.

[30] Second, the Court cautioned against an interpretation of the second prong of the IFA test that would essentially turn it into a kind of humanitarian and compassionate application. To do so, the Court continued, would be to conflate two procedures governed by "different objectives and considerations": *Ranganathan* at para 17.

[31] The *Ranganathan* decision has been considered and applied hundreds of times over the past 25 years. That said, one aspect of the decision has, in my respectful view, led to some analytical confusion amongst decision-makers. The confusion relates to the Court's statement that the reasonableness threshold "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe

area." While the Court here was clearly underscoring the high threshold associated with the second prong of the IFA test, I do not believe it was creating a standard that is *higher* than that associated with the refugee definition. Yet, read literally, this could be one interpretation of this phrase, as there are many situations of persecution that may not threaten the very life and physical safety of an individual. For example, the jurisprudence has long recognized that cumulative acts of discrimination – acts that do not necessarily threaten the actual life or physical safety of the individual – may constitute persecutory treatment.

[32] Beyond this, it is a matter of simple logic that the second prong of the IFA test was never intended to replicate the first prong which, as noted above, assesses whether a claimant faces a serious possibility of persecution, or a personalized risk of torture, risk to life, or risk of cruel and unusual punishment, in the IFA location. Rather, in my view, the Court in *Ranganathan* was merely elaborating on the central consideration raised in *Thirunavukkarasu*, which was itself an elaboration on the court's reasoning in *Rasaratnam*. That consideration was, and in my view continues to be, whether it would be objectively reasonable (or not "unduly harsh") to expect a claimant, who is being persecuted in one part of their country, to move to another less hostile part of the country before seeking refugee status abroad.

[33] Read in context, I do not believe that the Court in *Ranganathan* set out to overturn the prior jurisprudence or to materially change the test associated with the reasonableness standard. It follows that I also do not read the *Ranganathan* decision as creating a narrow, standalone minimum threshold requiring an individual to demonstrate that their actual life, or physical safety would be imperilled in the IFA location. To do so would, as noted above, elevate the

threshold for the reasonableness prong of the IFA test above the first prong, rendering that first part of the assessment redundant.

[34] I draw support for this finding from the numerous decisions of our Court which have emphasized the broad, flexible, and objective (while also individualized) assessment that is to be undertaken under the second prong of the IFA test. See for example: *Rodriguez Diaz v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1243 at paras 21, 32-33; *Karim v Canada (Citizenship and Immigration)*, 2015 FC 279 at para 26; *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 at para 30; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at paras 15-16; *Gayrat v Canada (Citizenship and Immigration)*, 2021 FC 666 at para 30; *Adeyemo v Canada (Citizenship and Immigration)*, 2022 FC 785 at paras 16, 25; *Cova Torres v Canada (Citizenship and Immigration)*, 2023 FC 1672 at para 51.

[35] Since the *Ranganathan* decision, the UNHCR Handbook has also been updated, and now incorporates a detailed guideline on internal flight: *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* [Guideline]. As noted above, the Court in *Thirunavukkarasu* referred to the previous version of the Handbook although it noted that, at the time, its description of the IFA test was rather limited. This is no longer the case. In the Guideline, the UNHCR notes: "In addition to there not being a fear of persecution in the internal flight or relocation alternative, it must be reasonable in all the circumstances for the claimant to relocate there. This test of 'reasonableness' has been adopted by many jurisdictions. It is also referred to as a test of 'undue hardship' or 'meaningful protection.'" In elaborating on

the reasonableness analysis, the UNHCR set out a variety of factors to consider in the IFA location, including:

- Whether the individual would be able to lead a "relatively normal life without facing undue hardship."
- The individual's personal circumstances.
- Psychological trauma arising from past persecution.
- Safety and security in the IFA location.
- Respect for human rights.
- Economic survival.

[36] This approach outlined by the UNHCR lends support to the notion embedded in much of the Canadian jurisprudence that the reasonableness analysis is a nuanced one, requiring decision-makers to assess various factors. I recognize, of course, that international guidelines are not binding on Canadian decision-makers. That said, the Supreme Court of Canada has singled out the UNHCR Handbook as being particularly instructive in interpreting the content of the refugee definition: *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 S.C.R. 689 at 713-14. In *Chan v Canada (Minister of Employment and Immigration)*, 1995 CanLII 71 (SCC), [1995] 3 SCR 593, the Supreme Court stated (at para 46):

> [T]he UNHCR Handbook has been formed from the cumulative knowledge available concerning the refugee admission procedures and criteria of signatory states. This much-cited guide has been endorsed by the Executive Committee of the UNHCR, including Canada, and has been relied upon for guidance by the courts of signatory nations. Accordingly, the UNHCR Handbook must be treated as a highly relevant authority in considering refugee admission practices. This, of course, applies not only to the Board but also to a reviewing court.

(2) Application: The RAD's reliance solely on *Ranganathan*

[37] With this rather lengthy summary of the prevailing legal principles, I turn to the matter at hand. In its reasonableness analysis, the only jurisprudence referred to by the RAD was the Federal Court of Appeal's decision in *Ranganathan*, and the only line cited from that decision was the passage in which the Court stated that a finding of unreasonableness "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant." Of course, it was not wrong of the RAD to refer to, and rely on, *Ranganathan*. However, my concern is that, in relying solely on this one line, divorced as it is from further jurisprudential context, the RAD adopted an approach that was more restrictive than the nuanced approach the case law requires. While the RAD went on to briefly consider the Applicant's mental health condition, I can only assume that it did so within the context of its overly constrained understanding of the reasonableness analysis.

[38] In *Vavilov*, the Supreme Court noted that a reasonable decision is one that is "justified in relation to the relevant factual and legal constraints that bear on the decision." I take this to mean that decision-makers must not go beyond the constraints that apply in any given case, but also that they should not operate on the basis of constraints that do not, in fact, exist. In this case, the Federal Court of Appeal's IFA jurisprudence was certainly a constraint that bore on the RAD. However, I am not convinced that the RAD's distillation of that jurisprudence into a single line, from a single judgment represents a reasonable characterization of that constraint.

[39] It may well be that it *would* be reasonable to expect Ms. Murati to relocate to Shkoder. Indeed, it was reasonable for the RAD to observe that Ms. Murati had not tendered evidence to

demonstrate impediments to finding employment, healthcare or housing. This assessment, however, must rest on a proper articulation of the prevailing jurisprudence, which I am not convinced occurred here.

VI. CONCLUSION

[40] For the above reasons, this application for judicial review will be granted. The RAD's reasons were intelligible and transparent. However, to the extent that its second prong analysis was predicated on an overly restrictive interpretation of the prevailing jurisprudence, I have concluded that it lacks justification, and judicial intervention is therefore warranted.

JUDGMENT in IMM-15135-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted to a different decision-maker for reconsideration in accordance with these reasons.

3. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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