Federal Court  Cour fédérale

Date: 20250528

Docket: IMM-9779-24

Citation: 2025 FC 964

Toronto, Ontario, May 28, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

MURUGANANDHAM CHEZHIYAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Muruganandham Chezhiyan [Applicant], seeks judicial review of a decision [Decision] of the Refugee Appeal Division [RAD] dated May 8, 2024, in which the RAD dismissed his claim as a Convention refugee or a person in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*Act*]. The determinative issue for the RAD was the availability of a viable internal flight alternative [IFA].

[2] For the reasons that follow, I find that the Applicant has not met his onus of showing that the Decision is unreasonable. I also decline to certify the Applicant's proposed question under subsection 74(d) of the *Act* by reason that it is not a serious question of general importance. Accordingly, this application is dismissed.

II. Preliminary Issue

[3] Prior to the hearing of this application, counsel for the Applicant obtained an Order removing him as the solicitor of record [Removal Order] by reason that he was unable to obtain instructions from the Applicant who appeared to have changed his contact information. One day prior to the hearing, counsel for the Respondent wrote to the Court suggesting that since the Applicant's counsel was removed so close to the hearing, the hearing should be adjourned and the Applicant should be given an opportunity to retain new counsel, or to identify himself as a self-represented litigant. Counsel asserted that this application should be taken as abandoned should the Applicant fail to do either (citing *Alashtar v Canada (Citizenship and Immigration)*, 2025 FC 891).

[4] I am aware that the Registry has unsuccessfully attempted to contact the Applicant via phone and email prior to the hearing of this application. Accordingly, I directed that the hearing proceed to allow for the possibility that the Applicant might attend the hearing, given that he was properly served with the Order setting the hearing down prior to the Removal Order.

[5] While the Applicant did not attend the hearing, and counsel for the Respondent asked the Court to consider the application to be abandoned, I am exercising my discretion to proceed with

the hearing and to consider the Applicant's position based on his written submissions, which were filed prior to the Removal Order (*Federal Courts Rules*, SOR/98-106, r 38 and *Saavedra Talavera v Canada (Citizenship and Immigration)*, 2010 FC 670 at para 2).

III. Facts

A. *The Applicant's History*

[6] The Applicant is a citizen of India from Chennai, Tamil Nadu who has a fear of persecution from the police, including a police officer identified as "Ajimal."

[7] On January 5, 2018, the Applicant, who was working as a computer technician, attended at Ajimal's home to fix his computers when Ajimal brandished a handgun, handcuffed the Applicant and sexually assaulted the Applicant who lost consciousness. When the Applicant regained consciousness, Ajimal showed him photos that he had taken of the Applicant naked and threatened to release them on the Internet, telling the Applicant he "owned" him.

[8] The Applicant received medical treatment from a doctor who advised the Applicant that Ajimal was corrupt and recommended the Applicant make a complaint to the Superintendent of Police, which the Applicant did. That same evening, Ajimal and another constable came to the Applicant's family home. Ajimal planted drugs in his house, videotaped and documented it and then took the Applicant to the police station where Ajimal ordered other officers to beat him. Ajimal later came to his cell and sexually assaulted the Applicant again. Ajimal told the

Applicant that he considered himself “untouchable” and the Applicant would pay for challenging him.

[9] The Applicant was released from jail with the payment of a bribe and ordered to report to the police every Friday. The day before his first scheduled appearance, Ajimal called the Applicant and told the Applicant that he would have to attend a private gay party instead of appearing as scheduled. The Applicant instead fled his home, living in Bangalore until he fled India in April 2018 and came to Canada where he later made a refugee claim.

B. *The Refugee Protection Division [RPD] Decision*

[10] The determinative issue for the RPD was the existence of viable IFAs in Kochi and Puducherry.

[11] The RPD identified the agents of harm as Ajimal and his colleagues in the Chennai police but found that the Applicant had provided insufficient evidence to establish that they had both the means and motivation to pursue him to the IFAs.

[12] The RPD also found that relocation to the IFAs would not be unreasonable.

C. *The RAD Decision*

[13] The RAD considered the agent of harm to be Ajimal and not the Chennai police more generally or the Indian state. It considered that Ajimal was a "rogue" officer who was acting as a private individual and not in his public capacity.

[14] The RAD disagreed with the RPD that Puducherry was a viable IFA as it was too small and too close to Ajimal to be a viable IFA but agreed with the RPD that Kochi was a viable IFA as it is approximately 700 km away and has a population of over 3 million people.

[15] The RAD found that there was insufficient evidence to find that Ajimal is motivated to pursue the Applicant in the IFAs. The RAD gave five reasons for this finding: (i) the assaults took place in 2018 and there is no evidence of any further interest or contact over six years later; (ii) despite Ajimal's threats to release the photos, there is no evidence he followed through on his threat; (iii) while police officers attended at the home of the Applicant's father two days after the Applicant failed to report as required for the first time, the father had moved and the evidence did not support the Applicant's assertion that the father moved to avoid Ajimal or the police more generally; (iv) Ajimal has made no other attempts to locate the Applicant despite the Applicant's continuing failure to report as ordered; and (v) the Applicant moved to Bangalore for six months before leaving India, and there is no evidence that Ajimal attempted to find him there.

[16] While the Applicant sought to invoke the "compelling reasons" exception under subsection 108(4) of the *Act*, the RAD found the exception was not applicable as the Applicant

has not established the conditions required to establish the exception: at no time did he meet the definition of a Convention refugee or protected person given the finding of a viable IFA, and he had not shown that the reasons for his claim have ceased to exist due to a change in country conditions.

[17] The RAD agreed that it would not be unreasonable for the Applicant to relocate to Kochi.

IV. Legislative Framework

[18] The determinative issue in the underlying decisions was the existence of an IFA.

[19] The test for determining whether a claim for protection under either section 96 or 97 of the *Act* should be rejected because the claimant has a viable IFA derives from *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993), [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*] and *Rasaratnam v Canada (Minister of Citizenship and Immigration)* (1991), [1992] 1 FC 706 (FCA) at 710-711, and can broadly be stated as follows:

> 1. Can it be said on a balance of probabilities that there is no serious possibility of the applicant's persecution in the proposed IFA? [First Prong]
>
> 2. If so, would it be objectively unreasonable or unduly harsh for the applicant to relocate to the proposed IFA, taking into account all the circumstances? [Second Prong]
>
> [collectively, the IFA test].

[20] Once the existence of an IFA has been identified, the onus is on the applicant to prove that they are at serious risk of being persecuted throughout the country (*Thirunavukkarasu* at paras 2, 6).

V. Issues and Standard of Review

[21] The issues raised by the Applicant can be distilled down to the following three issues which go to the reasonableness of the Decision:

A. Did the RAD impose too high a standard in assessing the First Prong of the IFA Test?

B. Did the RAD err in its identification and assessment of the agent of harm?

C. Did the RAD err in failing to consider the "compelling reasons" exception under subsection 108(4) of the *Act*?

[22] The applicable standard of review of the merits of an administrative decision is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision bears the hallmarks of justification, transparency and intelligibility, with the burden resting on the challenging party to show that the decision is unreasonable (*Vavilov* at paras 99-100).

VI. Analysis

A. *Did the RAD impose too high a standard in assessing the First Prong of the IFA test?*

[23] The Applicant submits that the RAD imposed too high a standard on the Applicant in assessing the First Prong of the IFA test by requiring him to prove on a balance of probabilities

that Ajimal is motivated to pursue him to the IFA, citing, *inter alia*, *Gomez Dominguez v Canada (Citizenship and Immigration)*, 2020 FC 1098 at paras 17-18 [*Gomez*].

[24] The Respondent submits that the RAD's assessment of the Applicant's evidence on the First Prong of the IFA test is consistent with the well-established standard, which requires the Applicant show "a serious possibility of risk" that the agent of persecution has the probable means and motivation to search for the Applicant in the suggested IFA (citing *Caballero Salazar v Canada (Citizenship and Immigration)*, 2024 FC 1007 at para 20 and *Athwal v Canada (Citizenship and Immigration)*, 2024 FC 672 at para 20).

[25] In Reply, the Applicant suggests that authorities cited by the parties are "irreconcilable" and, accordingly, he has proposed the following question for certification:

> If Internal Flight Alternative is raised against a claim, is the burden on the claimant to show that the there is a serious possibility (that the agent(s) of persecution have the means and motivation to locate the refugee claimant) or on the balance of probabilities?

[26] I agree with the Respondent that the RAD applied the correct standard of proof. This is reflected in the following excerpt of the RAD's Decision which shows the standard of proof employed by the RAD under the First Prong of the IFA test:

> [8] I find the RPD was correct in concluding the Appellant did not establish on a balance of probabilities a local police officer (agent of persecution) has the motivation and means to pursue him to the IFA location such that he would face a reasonable chance of persecution or s. 97 risk there.

[27] The “reasonable chance” articulation of the test has been squarely endorsed by the Federal Court of Appeal (*Adjei v Canada (Minister of Employment & Immigration)*, [1989] 2 FC 680 (FCA) at 683. Not only does this dispose of the issue raised by the Applicant, it is also a full answer to the question of certification, as the Applicant has not proposed a serious question of general importance which would be dispositive of an appeal (*Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at para 11).

B. *Did the RAD err in its identification and assessment of the agent of harm?*

[28] The Applicant submits that the RAD made three errors in its analysis of the agent of harm.

[29] First, the Applicant says that the RAD erred in finding that the agent of harm was Ajimal and not the police more generally. He points to the laying of criminal charges against him, which he says would necessarily involve the police at large making them agents of persecution.

[30] I find the RAD’s identification of a single agent of harm to be reasonable. It was open to the RAD on the record and the RAD provided a clear rationale for this finding, namely that there was no evidence that Ajimal’s superiors participated or condoned his actions and that his complaint to the Superintendent of Police was taken seriously. The Applicant’s argument amounts to a request for the Court to engage in a reassessment of the evidence, which is not the function of the Court on judicial review (*Vavilov* at para 125).

[31] Second, the Applicant submits that the RAD erred in finding that Ajimal was acting outside of his authority and was "rogue." He contends that this error led the RAD to further err in not considering his claim as torture inflicted by a public official under paragraph 97(1)(a) of the *Act* and the definition of torture as defined in Article 1 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* [*Convention Against Torture*] attached as a Schedule to the *Act*.

[32] Contrary to the Applicant's assertion, the RAD did in fact consider the *Convention Against Torture* at paragraphs 11 and 12 of the Decision and reasonably rejected the Applicant's argument on the basis that Ajimal was not acting as a public official when he sexually assaulted the Applicant at his home and was misusing his authority when he arrested the Applicant and planted evidence in the Applicant's home, a rationale that is both logical and justified on the record.

[33] Finally, the Applicant submits that the RAD erred in its assessment of Ajimal's motivation to pursue the Applicant to the IFA, including by drawing inferences based on the passage of time and lack of ongoing inquiries. Contrary to the Applicant's assertions, I find that these were reasonable inferences to make. The Federal Court has consistently held that a lack of persistent inquiries by an agent of persecution can reasonably support a finding of a lack of motivation to locate the applicant (see for example *Pardo v Canada (Citizenship and Immigration)*, 2024 FC 427 at para 16), and absent objective evidence that the agent of harm remains interested in pursuing the applicant, it is also reasonable to take the passage of time into

consideration when assessing risks under section 97 of the *Act* (*Vyshnevskyy v Canada (Citizenship and Immigration)*, 2020 FC 881 at paras 30-35).

[34] Moreover, the RAD relied on other factors in finding that Ajimal lacked the motivation to pursue the Applicant to the IFA, the most compelling of which was the fact that the Applicant was not pursued to Bangalore where he lived for six months before fleeing India.

C. *Did the RAD err in failing to consider the "compelling reasons" exception under subsection 108(4) of the Act?*

[35] The Applicant argues that the RAD erred in failing to consider his argument that "compelling reasons" existed under subsection 108(4) of the *Act* as an exception to the general rule that refugee status will cease if the conditions giving rise to the risk of persecution no longer exist in the country of origin. The Applicant submits that the existence of an IFA does not end the analysis since "an IFA speaks to the present, while compelling reasons looks to the past" (citing *Gomez* para 42). The Applicant says that compelling reasons are made out based on the torture he was subjected to.

[36] I agree with the Respondent that the Applicant's argument ignores that the exception under subsection 108(4) of the *Act* requires as conditions precedent that the Applicant establish that they met the definition of Convention refugee or protected person at some point (whether past or present) and there was a change in country conditions. I agree with the RAD that the Applicant failed to make out these preconditions and given that I have found no error in the RAD's IFA analysis, this confirms that the Applicant never met the definition of Convention

refugee or protected person given the existence of an IFA (*Abu v Canada (Citizenship and Immigration)*, 2021 FC 258 at para 9).

VII. Conclusion

[37] The Applicant has not shown the RAD Decision to be unreasonable. On the contrary, the Decision bears the hallmarks of intelligibility, transparency and justification. Accordingly, this application for judicial review is dismissed.

JUDGMENT in IMM-9779-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. There is no question for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9779-24
STYLE OF CAUSE:	MURUGANANDHAM CHEZHIYAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 26, 2025
JUDGMENT AND REASONS:	WHYTE NOWAK J.
DATED:	MAY 28, 2025

APPEARANCES:

Did Not Appear	FOR THE APPLICANT
Aneta Bajic	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT