

Federal Court



Cour fédérale

**Date: 20181004**

**Docket: IMM-803-18**

**Citation: 2018 FC 989**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, October 4, 2018**

**PRESENT: The Honourable Mr. Justice Bell**

**Docket: IMM-803-18**

**BETWEEN:**

**GURJEET SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the matter

[1] This is an application for leave and for judicial review under subsection 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 [the Act], of the December 8, 2017 decision by an Immigration and Refugee Board Refugee Protection Division [RPD] member, refusing the

refugee claim made by Mr. Gurjeet Singh [the applicant]. The applicant claimed refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA].

II. Relevant facts

[2] The applicant is a 38-year-old citizen of India of the Sikh religion. He comes from a family of farmers and preachers. He is a preacher himself. In 1988, his father disappeared without a trace. The applicant claims that his father, who was also a preacher, was likely killed by police who accused him of having ties to militants. There is no evidence of this claim. The applicant says that since his father's disappearance, his family has been harassed by police because of his father's ties to militants.

[3] When the applicant returned from a trip to Thailand and Malaysia, where he had gone to preach, on July 31, 2011, his home was invaded. He claims to have been arrested and tortured by police, who accused him of acting as a mediator with the militants. The applicant claims that he was released two days later because of the intervention of some influential people in India and after paying money. On March 23, 2012, he was arrested and tortured again by police for the same reasons as the first time, and he was released under the same conditions.

[4] He arrived in Canada on July 1, 2012. On July 6, 2012, he made his refugee claim, which was heard on November 14, 2017. On December 8, 2017, the member refused the application and found that the applicant is not a Convention refugee or a "person in need of protection." That decision is the subject of this application for judicial review.

III. Decisions

[5] In his decision of December 8, 2017, the member rejected the refugee claim by concluding that there was no reasonable prospect that the applicant would be persecuted, tortured, or subjected to cruel and unusual treatment or punishment, on a balance of probabilities, if he were to return to India.

[6] In his reasons, the member raised several inconsistencies in the applicant's story and explanations, with respect to dates, among other things. For example, in the applicant's passport, it is indicated that he was in Malaysia and Thailand from June 26, 2011 to August 6, 2011, whereas the applicant submitted that July 31, 2011 was the date of his first arrest in India. When asked about this inconsistency, the applicant stated that it was an error and that the date of his first arrest was August 17, 2011, not July 31, 2011. He explains that immediately after discovering the inconsistency, he advised his counsel at the time. He also says that the inconsistency stems from errors in translation. The member did not accept these explanations.

[7] The member noted that the applicant returned to his country of origin without difficulty and had no problem leaving his country using his Indian passport. The applicant's response to this observation is that he hired a smuggler who would have paid a bribe.

[8] Notwithstanding the member's finding regarding refugee status or protected person status, the member found that there is an internal flight alternative [IFA] for the applicant in either Mumbai or New Delhi. Both parties focused their oral arguments on the issue of the IFA.

IV. Relevant provisions

[9] The relevant provisions of the IRPA are set out in the schedule attached to these reasons.

V. Issue

[10] The answer to the IFA question will be critical in this application. So the question is: was it reasonable for the member to conclude that there is an IFA in Mumbai or New Delhi?

VI. Analysis

[11] The question of whether there is an IFA is a mixed question of fact and law. Therefore, this Court must exercise considerable deference with respect to the member's findings while also determining whether the decision-making process was justifiable, transparent and intelligible, and whether the decision was within the "range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 S.C.R. 190; *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 at paras 30–35, [2016] 4 FCR 157; *Zhou v. Canada (Citizenship and Immigration)*, 2018 FC 182 at para 5, 289 ACWS (3d) 166).

[12] After the panel raised the IFA, the applicant had the burden of proving, on a balance of probabilities, that he: 1. would seriously risk being persecuted if he took refuge in New Delhi or Mumbai; and 2. that it was objectively unreasonable to seek refuge in that other region of his country before resorting to international protection (*Rasaratnam v. Canada Minister of*

*Employment and Immigration*), [1992] 1 F.C. 706 at pp 709–711, 140 NR 138; *Gomez Espinoza v. Canada (Citizenship and Immigration)*, 2009 FC 806 at paras 20–21, 179 ACWS (3d) 906; X (Re), 2017 CanLII 94170 CA IRB).

[13] The applicant claims that because he has been a preacher since 2002, he is known throughout India. He also claims that he will not be able to hide in society because he will need identity documents in order to obtain housing or to do other things, and this will attract the attention of the police, who are looking for him. For these reasons, he considers the member's decision unreasonable. However, I note that the member found that the applicant was travelling elsewhere in India without any problems with the authorities. In addition, the member found that there are many Sikhs living in the two cities where the IFA is possible, without persecution. I also note that there is no evidence that Punjab local police are in contact with national police or that other police forces outside of Punjab have an interest in pursuing the applicant. Finally, I note that the applicant did not offer any evidence of communication between the different police departments in India.

[14] Furthermore, the applicant argues that the decision is unreasonable because of a lack of analysis of the facts by the member; that is, the member relied on precedents without incorporating the facts and circumstances that are specific to the applicant. Although I have some sympathy for the position taken by the applicant, I do not share his opinion. The member emphasized the applicant's claims, including his circumstances, and used the case law and jurisprudential guides to determine the burden that the applicant had to meet. The member did not err in his interpretation of the burden of proof. Furthermore, the member observed that the

applicant had not met this burden. Given that the burden of establishing both components of the test was on the applicant, the member took a reasonable approach.

VII. Conclusion

[15] For all these reasons, the application for judicial review is dismissed.

**JUDGMENT in IMM-803-18**

**THE COURT ORDERS that** the application for judicial review is dismissed without costs. There is no question to be certified for consideration by the Federal Court of Appeal.

“B. Richard Bell”

---

Judge

## SCHEDULE A

***Immigration and Refugee Protection Act***, S.C. 2001, c. 27

***Loi sur l'immigration et la protection des réfugiés***, L.C. 2001, c. 27

### Convention refugee

### Définition de réfugié

**96** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

### Person in need of protection

### Personne à protéger

**97 (1)** A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

**97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist,

a) soit au risque, s'il y a des motifs sérieux de le croire,



of torture within the meaning of Article 1 of the Convention Against Torture; or

**(b)** to a risk to their life or to a risk of cruel and unusual treatment or punishment if

**(i)** the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

**(ii)** the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

**(iii)** the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

**(iv)** the risk is not caused by the inability of that country to provide adequate health or medical care.

### **Person in need of protection**

**(2)** A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

**b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

**(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

**(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats

### **Personne à protéger**

**(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-803-18

**STYLE OF CAUSE:** GURJEET SINGH v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** AUGUST 27, 2018

**REASONS FOR JUDGMENT  
AND JUDGMENT:** BELL J.

**DATED:** OCTOBER 4, 2018

**APPEARANCES:**

Mr. Salif Sangare FOR THE APPLICANT

Ms. Michèle Plamondon FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Salif Sangare, Counsel FOR THE APPLICANT  
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT  
Montréal, Quebec