Federal Court  Cour fédérale

Date: 20200220

Docket: IMM-3825-19

Citation: 2020 FC 277

[REVISED ENGLISH TRANSLATION]

Ottawa, Ontario, February 20, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MAJOR SINGH
JASWINDER KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review, made under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], concerns a claim for refugee protection under sections 96 and 97 of the Act.

[2] The claim was rejected by the Refugee Protection Division (RPD) and the Refugee Appeal Division (RAD). Obviously, the only decision before the Court is the RAD decision, which concluded that the applicants had an internal flight alternative (IFA) in India's major cities, such as Delhi, Mumbai or Calcutta. For the reasons that follow, the Court finds that there is no reason to intervene because the RAD's decision is reasonable.

I. Facts

[3] The principal applicant, Major Singh, has a brother, Mahavir Singh, who actively participated in religious and political activities in Punjab, India. One of his friends was allegedly a member of Akali Dal Amritsar. This apparently forced him to live in hiding because of problems he had with local police.

[4] Mahavir Singh was reportedly arrested and tortured twice because of his connections with that member of Akali Dal Amritsar. This is why he was apparently falsely accused of being a militant.

[5] In February 2016, the principal applicant wrote to the authorities to ask them to stop the police from harassing his brother. This resulted in a visit to the police station, where he was allegedly beaten. On March 3, 2016, the police searched the principal applicant's home and questioned him about his brother. He was arrested and brought to the police station again. He stated that the interrogation about his brother and other militants continued there and that he was tortured. In his Basis of Claim (BOC) Form, the principal applicant provides some details about

the torture he was put through. If the details he gives are accurate, there is no doubt that this was torture. He was detained for four days and released on March 7, 2016, after paying a bribe.

[6] On June 4, 2016, the principal applicant was summoned to the police station and again questioned about the militants and their future plans. He was pushed around on this occasion.

[7] The principal appellant was arrested once more, on August 13, 2016. His wife was also arrested when she tried to get in the way of a police vehicle that was supposed to take him away. The applicant alleges that he was tortured again. The other applicant, Ms. Kaur, was apparently released on August 14 after being beaten and sexually abused. The principal applicant was allegedly released only on August 16, 2016.

[8] Faced with this harassment, the applicant and his family (in addition to Ms. Kaur, the family includes three daughters) left Punjab at the end of September 2016 to stay with a friend in Delhi. The applicants then used the services of a smuggler to come to Canada on January 1, 2017. They had to claim refugee protection in Canada on May 29, 2017.

II. RPD and RAD decisions

[9] Even though it is true that only the RAD decision is under judicial review before the Court, it would be useful to briefly comment on the RPD decision since the RAD essentially confirmed it.

[10] It was the RPD that first concluded that the applicants had an IFA. According to the RPD, there is an IFA in three major cities: Delhi, Mumbai and Calcutta. The applicants filed three affidavits regarding whether there is another part of the country where they would not have a well-founded fear of persecution. First, Mahinder Singh, a resident of the applicants' village, submitted an affidavit in which he stated that it appeared that the rest of the family in India was living in hiding. In addition, the police apparently were still asking questions about the applicants' absence. The RPD found those statements to be vague.

[11] The person with whom the principal applicant's family took refuge also produced an affidavit. As with Mahinder Singh's affidavit, Surinderpal Singh's affidavit recounted the same events involving the applicant and the authorities in Punjab, adding that the police came to his home after the applicants had left and asked questions about them. Surinderpal Singh was then allegedly arrested and brought to the police station. There, he was reportedly questioned and accused of providing assistance to militants. The RPD did not find that affidavit to be credible. In its view, it repeated the same information that was provided by the applicants in their BOC forms, but nothing in that affidavit showed independent knowledge of the facts of this matter. The RPD noted that the affidavit was very short and vague regarding his arrest after the family's departure. Given the nature of the incident, which should have been the central element of the affidavit, the RPD would have expected more details and additional evidence with respect to those allegations. In addition, the RPD was surprised that the authorities never located the family in the four months they were in Delhi. There was no credible evidence that the police considers the principal applicant to be a high-level militant. There was also no evidence that the police in Punjab are searching for the principal applicant as a militant or that they would even have any

interest in searching for him elsewhere in India. The RPD therefore concluded that there were no reasons to pursue the applicants in another Indian city because of their association with militants.

[12] With regard to the possibility of settling somewhere outside Punjab, the RPD noted that the arguments presented in that respect are actually the same as those regarding the first prong of the applicable test in that the principal applicant claims that, no matter what activity he takes up elsewhere in India, the authorities could find him. Since the panel had already concluded that there was no serious possibility that he would be found outside Punjab, there was no evidence with respect to the second prong.

[13] The RAD also considered that the issue was limited to the availability of a viable IFA. The RPD's decision was correct.

[14] In the RAD's view, there was no serious possibility of persecution outside Punjab, and it was neither unreasonable nor unduly harsh for the appellants to resettle in one of the three cities. First, the applicants did not have a profile of the sort that might prompt the Punjabi authorities to search for them elsewhere. The RAD was also not satisfied that these appellants could be identified by the police no matter where they are because they are subject to the tenant verification system. Based on the documentary evidence, although there is a tenant verification system, it is applied state by state, each state having its own police force without any connection to the others. In fact, communications between police forces of different states are limited to serious types of crimes such as major crimes, terrorism or some large-scale organized crime. This is not the case here. The RAD wrote the following at paragraph 49 of its decision:

> [TRANSLATION]
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> [49] Given this research, it seems that police forces in India do not always or almost never communicate with each other, despite the tenant verification system in place in the proposed IFA locations, and it is very unlikely that they would communicate beyond the borders of their state regarding people who are not seriously suspected of major crimes and sought for that reason.

[15] This conclusion also applies to the new Crime and Criminal Tracking Network and Systems (CCRNS). According to the RAD, the documentary evidence confirms that, given the applicants' profile, they are not of sufficient interest to the Punjabi authorities to warrant searching for them elsewhere in India. The documentary evidence is such that [TRANSLATION] "it shows that problems and mistreatment of Sikh militants are local in nature and are largely limited to the Punjab region" (RAD decision, para 54). In the end, if the principal applicant had any kind of profile, he would not have been released three times in 2016, and the applicants would have been unable to leave the country via an airport using their own identity documents. The RAD concluded as follows:

> [TRANSLATION]
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> [57] In other words, for the reasons stated above, the tenant verification process does not expose the appellants to a risk in any of the proposed IFA locations. This is because the appellants have not committed any serious crimes and because there is a lack of communication between the police authorities of the various states concerned.

[16] With respect to the second prong of the test, the RAD noted its very high threshold, which, as stated by the Federal Court of Appeal in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 [*Ranganathan*], "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" (para 15). The RAD did not accept the reasons given by the applicants, namely, that they do not know the language well, are not educated and would not be able to find work.

[17] Furthermore, the RAD noted that India's main cities have large Sikh communities. In fact, the documentary evidence shows that the minorities that live outside Punjab have access to housing, jobs, health care and education. They also freely practise their religion. As noted by the RAD at paragraph 66, [TRANSLATION] "they face no difficulties in settling in another area of India". As a result, according to the RAD, the applicants have an IFA in India.

III. Arguments and analysis

[18] In my view, the decision that is the subject of the application for judicial review is sufficiently justified, intelligible and transparent.

[19] My first observation is of course with regard to the burden: no one is disputing that the RAD decision should be reviewed on the reasonableness standard of review, which places a heavier burden on an applicant than the correctness standard.

[20] My second observation is that the availability of an IFA is determined on the basis of a stringent two-pronged test: (1) the refugee claimant must establish, on a balance of probabilities, that there is a serious risk that he or she would be persecuted in the proposed IFA location, and (2) that it would be objectively unreasonable to seek refuge there. I must note that the Federal Court of Appeal set the threshold very high with respect to the second prong. In *Ranganathan*,

after citing long passages from Justice Linden's reasons in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, and emphasizing the parts where the Court of Appeal insists that the IFA's attractiveness is irrelevant, the Court of Appeal found as follows:

> [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.

As noted by the Court at paragraph 17, the distinction between refugee claims and humanitarian and compassionate applications should not be blurred.

[21] My third observation is that "it is up to the refugee claimant to establish the inexistence of an IFA according to the two-part test: applicants must establish that they are at risk throughout their country and that the IFA would be objectively unreasonable given the circumstances" (*Singh v Canada (Citizenship and Immigration)*, 2012 FC 770 at para 23). This was not established.

[22] Before the Court, the applicants essentially expressed their disagreement with the RAD's conclusions. Thus, according to the applicants, the use of the National Documentation Package (NDP) to conclude that verifications between Indian states are made for major crimes,

terrorism and criminal organizations' activities makes the conclusions speculative and is a narrow interpretation of the documentary evidence. Yet, the documentary evidence is there, and the conclusion is neither speculative nor the result of a narrow interpretation. In fact, the applicants' proposition transforms a "serious risk" into a risk *simpliciter*. The test cannot be changed in that way.

[23] Other than submitting that an IFA did not eliminate all risk, which is not the test as stated, the applicants have not established in what way the evidence on the record cannot lead to the conclusion that the applicant's problems go beyond his village or Punjab. In other words, the evidence on the record fully supported the conclusions made by the RPD and, above all, the RAD. The applicants' burden was not to try to satisfy this Court that it should have a different opinion from the RAD, but to show that the decision was unreasonable.

[24] If the principal applicant's assertions that the incident beginning in February 2016 with his letter to the authorities to complain about the harassment of his brother and leading to his family's departure for Delhi, where they lived until the applicants' departure for Canada on January 1, 2017, are true (and there is no reason to doubt this story), it is difficult to believe that their profile is such that India's police forces could have any interest in the applicants. The documentary evidence certainly pointed in that direction. The applicants can only guess or suppose that there is still some residual risk. This does not constitute a serious risk. This is not the burden the applicants were asked to discharge.

[25] Regarding the second prong of the test, the applicants simply submit, without evidence, that being [TRANSLATION] “Sikh in India can be a challenge in itself” (applicants’ factum, para 3.27) and that their education and knowledge would not be sufficient to find jobs.

[26] These claims cannot satisfy the stringent second prong of the test; they are also contrary to the evidence filed, which tends to show that there are numerous communities all over India. The RAD referred directly to Tab 12.8 of the NDP regarding Sikhs who leave Punjab and go elsewhere in India; it indicates that settling outside Punjab does not lead to any particular difficulties. The difficulty inherent in any relocation, whether related to immigration outside one’s country or staying in a safe place in one’s own country, cannot be doubted or minimized. But a person can only be a true refugee if he or she cannot relocate in his or her own country. Given the relocation evidence provided, the applicants, for their part, had to file actual and concrete evidence of the conditions that would threaten the lives and safety of those who try to relocate (*Ranganathan*, para 15). Nothing of that sort was provided in this case.

[27] Accordingly, the application for judicial review must be dismissed. The parties have agreed that there is no question to certify. The Court shares this view.

JUDGMENT in IMM-3825-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No serious question of general importance is certified.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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