

Federal Court



Cour fédérale

Date: 20200414

Docket: IMM-2496-19

Citation: 2020 FC 510

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, April 14, 2020

PRESENT: The Honourable Mr. Justice McHaffie

BETWEEN:

**JAGDEEP SINGH
PARWINDER KAUR
GURVEER SINGH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Jagdeep Singh and Parwinder Kaur, who will be referred to as the Singhs, allege that they were arrested and tortured by Punjab and Haryana police. They claim that the police threatened to kill them if they did not produce two suspected Sikh militants. They allege that they left India

with the help of an agent and, together with their son, claimed refugee protection in Canada. The Refugee Protection Division (RPD) and the Refugee Appeal Division (RAD) both concluded that an internal flight alternative (IFA) was available in Mumbai or Delhi and rejected the refugee protection claim.

[2] The Singhs argue that there is no IFA because Mumbai or Delhi police would be aware of the Singhs' location as soon as they register as tenants there. The Mumbai or Delhi police would inform Punjab authorities of their presence, and the Punjab authorities would kill them. The Singhs submit that, in rejecting that argument, the RAD ignored relevant evidence from the National Documentation Package (NDP) and did not take into account the nature of the harm feared. Accordingly, they maintain that the RAD's decision was unreasonable.

[3] I find that the RAD's decision was reasonable. The RAD's determinations at the heart of this case, namely, that the Singhs' names were not in databases available to police because they had no criminal records and that the Punjab police would not have the means of finding the Singhs in Mumbai or Delhi, are supported by the evidence. The Singhs are now presenting arguments and evidence that were not part of their arguments before the RAD and which do not contradict the RAD's findings. Despite the Singhs' statements to the contrary, the RAD reasonably considered the evidence in order to arrive at its conclusion.

[4] The application for judicial review is therefore dismissed.

II. Singhs' refugee protection claim

[5] The Singhs are Sikhs from Punjab, India. They claim that they had problems with Punjab and Haryana police after Ms. Kaur's cousin and his friend, a Sikh separatist known for his speeches denouncing the police, visited them. Following the visit, the police allegedly arrested, detained and tortured the Singhs because they had been unable to provide information regarding those individuals. After being detained in August 2016, they were released in exchange for a bribe, but on the condition that they turn in Ms. Kaur's cousin and his friend to the police by September 15, 2016. If the Singhs did not meet that condition, the police told them that they would kill them.

[6] Following these events, the Singhs left India for Canada. They allege that they paid a considerable amount of money to an agent to help them escape. The agent helped them obtain visitor visas and arranged for the Singhs to go to a specific Lufthansa counter at the Delhi airport. The Singhs used their authentic passports to leave the country, and Mr. Singh testified that they did not undergo an immigration check at the airport.

[7] Seven months after their arrival in Canada, in May 2017, the Singhs claimed refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27* (IRPA). The refugee protection claim was based on their fear of the Punjab and Haryana police, who are allegedly targeting them because they did not turn in the cousin and his friend to them.

III. Rejection of refugee protection claim

[8] At the hearing, the RPD raised the possibility that the Singhs could take refuge in India, in either Mumbai or Delhi. The Singhs claimed that they would not be safe in those locations because of the requirement to register as tenants to live in Mumbai or Delhi. The Singhs believe that, as soon as they register, they would be verified by the police, and that, following that verification, the Mumbai or Delhi police would inform the Punjab police of their presence in Mumbai or Delhi, exposing them to a serious possibility of being killed.

[9] The RPD rejected the Singhs' claim because it found that the Singhs were not credible, and that, in any case, an IFA was available in Mumbai or Delhi. With respect to the IFA, the RPD found that, on a balance of probabilities, the Singhs' names were not in a database that would cause the Mumbai or Delhi police to alert the police in Punjab or Haryana since they have no criminal records or arrest warrants. According to the RPD, this is confirmed by the fact that the Singhs were able to leave India, without difficulty, on their own passports despite all passengers being subject to immigration checks, which would not be possible if the police was looking for them. The RPD therefore concluded that there was no serious possibility of persecution in the IFA location, and nothing suggested that the IFA was unreasonable given the Singhs' circumstances.

[10] On appeal to the RAD, the Singhs challenged the RPD's finding with respect to their credibility. They also raised two arguments against the RPD's analysis regarding the IFA: (1) the Singhs could be identified by the Mumbai or Delhi police and reported to the Punjab police; and

(2) the amount paid to the agent played an important role and explained the Singhs' ability to leave their country without issue.

[11] The RAD confirmed the RPD's decision. It found that the IFA was the determinative issue and addressed the two arguments presented by the Singhs in that respect. Regarding the first argument, the RAD noted that the Singhs had stated in their forms that they had not been charged or convicted of a crime in India. Like the RPD, the RAD concluded that, without criminal records or arrest warrants against them, the Singhs would not be identified by the Mumbai or Delhi police during a verification as part of the tenant registration process.

Accordingly, the Mumbai or Delhi police would not alert the Punjab or Haryana police of their presence.

[12] The RAD noted that the most recent objective evidence did not support the Singhs' submissions. That evidence indicated that there was a single police database in India: the Crime and Criminal Tracking Network and Systems (CCTNS). According to the RAD, there is little information about the categories of people included in the database, and the evidence indicates that "tracking of persons of interest is difficult and police have a mixed record of success". The RAD also stated that the evidence indicated that it was impossible for police to verify the identities of all tenants and that the police did not have sufficient resources or staff to carry out all the verifications.

[13] With respect to the second argument, the RAD noted that the evidence showed that, at the international airport in Delhi, all passengers must undergo an immigration check. That check

includes a determination that the traveller is eligible to leave India and a computer screening of passengers. The RAD concluded that the Singhs' arguments regarding the amount paid to the agent did not address the evidence regarding passenger obligations, but simply restated Mr. Singh's testimony. The RAD found that the Singhs would have been required to undergo an immigration check and that they would have been stopped if their names had been in the police database. It therefore concluded that there was no serious possibility that the Singhs would be persecuted in Mumbai or Delhi.

[14] The RAD also considered the reasonableness of the Singhs' relocation to Mumbai or Delhi and found that the RPD had not erred in determining that nothing suggested that the IFA was unreasonable.

IV. Issue

[15] The Singhs allege that the RAD's decision that an IFA is available in Mumbai or Delhi was unreasonable. They raise three arguments in this regard:

- (1) The RAD ignored evidence regarding the means of monitoring available to police in India.
- (2) The RAD ignored evidence regarding the tenant verification system.
- (3) The RAD unreasonably excluded the Singhs' justification regarding the help obtained through the agent and their ability to evade immigration checks.

V. RAD's decision reasonable

A. *Standard of review*

[16] The reasonableness standard applies to the assessment of the reasonableness of an IFA as well as to the RAD's evidentiary analysis: *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at paras 11, 19. Although the parties' arguments were submitted before *Vavilov*, that judgment confirms that the reasonableness standard applies to the RAD's analysis in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

B. *Internal flight alternative*

[17] An IFA refers to the possibility that protection exists elsewhere in the same country where a claimant alleges a fear of persecution: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at pp 709–11. In order to meet the definition of refugee or person in need of protection under the IRPA, the onus is on the person claiming refugee protection in Canada to show that there is no IFA in another area of the same country: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at pp 594, 597–98.

[18] To establish that an IFA exists, the RAD must be satisfied on a balance of probabilities (1) that there is no serious possibility of the claimant being persecuted in the part of the country where an IFA exists; and (2) that in all the circumstances, including circumstances particular to

the claimant, conditions in the IFA area are such that it would not be unreasonable for the claimant to seek refuge there: *Rasaratnam* at pp 709–11. The determinative issue in this case is the first prong of the test, namely, the existence of a serious possibility of persecution in Mumbai or Delhi, since the Singhs are not challenging the RAD's decision regarding the second prong of the test.

C. *Singhs' arguments*

(1) Evidence regarding monitoring system

[19] The Singhs argue that the RAD came to its conclusion without assessing all of the evidence and that, accordingly, its decision must be set aside. Among other things, they submit that the RAD did not consider the evidence regarding the monitoring systems available to the police. They refer to sections of the NDP indicating that telephone calls, emails and online activities of Indian citizens are monitored, that there are lawful interception and monitoring (LIM) systems in place and that a Central Monitoring System (CMS) was in the process of being implemented.

[20] I do not accept this argument. The evidence that the Singhs are referring to before this Court is not related to the reason they have submitted for an IFA not being available in Mumbai or Delhi. The Singhs merely argued that authorities in Mumbai or Delhi would identify them following tenant verification because their names would appear in a database available to the police. The only argument to that effect presented to the RAD was as follows (reproduced in full):

It is the possibility that the appellants might be trapped into police's problem again because they had failed to produce [the cousin and his friend]. Due to tenant verification procedures, the appellants might be handed over to the Punjab police so IFA is not realistic for the appellants.

[Emphasis added.]

[21] The Singhs did not raise the argument regarding the possibility that Punjab police would search for them using a general monitoring system or that the Mumbai or Delhi police would target them for monitoring purposes. It is therefore not unreasonable that the RAD did not refer to evidence that was not related to the Singhs' arguments and did not mention other databases.

[22] Let me also note that the Singhs did not refer to this evidence before the RAD, even though the existence and effectiveness of the police database in India were central to the RPD decision. If that evidence was [TRANSLATION] "extremely important" as the Singhs are now claiming, the onus was on them to point it out to the RAD or to at least refer to it. In the words of Justice Zinn, "[t]he RAD can hardly be faulted for not considering a submission that was not put to it": *Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at para 14.

(2) Evidence regarding tenant verification system

[23] The Singhs also dispute the fact that the RAD relied on evidence describing the ineffectiveness of the tenant verification system, without considering evidence regarding its effectiveness. Specifically, they cite an excerpt stating that a police verification is carried out every time a property is rented out and another excerpt indicating that the rate of compliance with the tenant verification requirement in Mumbai is about 95%.

[24] The documentary evidence that the Singhs allege was not considered is not likely to show that the RAD's findings were unreasonable. Indeed, the excerpts of evidence that the Singhs identified with respect to [TRANSLATION] "the effectiveness of the tenant registration system" do not show that the tenant registration system is effective or that the police have the means of carrying out verifications, only that it is available and mandatory. In addition, the evidence referred to by the RAD in its review of "the most recent objective evidence" is from December 2017, while the reference to the compliance rate of 95% dates back to March 2012. It cannot be said that the RAD's decision is unreasonable because it fails to mention less recent evidence, which was not raised by the Singhs before the RAD, and which, in any event, does not contradict the RAD's conclusions regarding the system's effectiveness.

[25] Similarly, I do not accept the Singhs' argument that the RAD did not take into account the nature of the agent of persecution and the fact that it has control throughout the entire country. The agent of persecution described by the Singhs is the Punjab and Haryana police. An individual cannot simply state, without producing supporting evidence, that the police in one area necessarily has control throughout the entire country. This is especially so when no issue or evidence in that respect was presented to the RAD.

(3) Evidence regarding money paid to agent

[26] With respect to the use of their authentic passports at the airport, the Singhs argue that the RAD did not provide an explanation to justify the exclusion of their submissions regarding a bribe that enabled them to leave the country without issue.

[27] However, the RAD's reasons show that it considered the Singhs' explanation but did not believe that this testimony addressed the evidence that the Singhs would have had to go through an immigration check before they could leave the country. The RAD referred to the recording of the hearing before the RPD in which Mr. Singh testified that they had been directed to a specific Lufthansa counter. It also noted the RPD's finding that "other than this instruction, no other guidance as to how the claimants were to conduct themselves at the Delhi airport was provided by the agent". The RAD was not satisfied that Mr. Singh's testimony about the agent was sufficient to overcome the evidence regarding the requirements on the record that the Singhs would have been subject to a subsequent check by the Bureau of Immigration. Since the Bureau did not stop the Singhs, the RAD found that there were no criminal records and that the authorities could not identify them as wanted individuals. In my view, this was reasonable. The Singhs' argument that the agent could have arranged for them to circumvent immigration checks given the general corruption in India is only speculation and cannot stand without clear and sufficient evidence of the agent's actions in that respect.

[28] In any case, the RAD considered the fact that the Singhs left India using their true passports because this showed that their names were not in a police database. The Singhs' argument that they were able to overcome every obstacle with the agent's help does not undermine the fact that they had no criminal records or arrest warrants and that there was no evidence that their names were in any database.

[29] To sum up, the RAD's decision that there was no fear of persecution was reasonable. The RAD committed no error in its reasoning in determining that, without a criminal record, the

Singhs would not be identified by the Mumbai or Delhi police as being sought by the Punjab police. Following that logic, there can be no fear of persecution from the Punjab police, and the finding that an IFA is available in Mumbai or Delhi is reasonable.

VI. Conclusion

[30] The main argument presented by the Singhs to the RAD regarding the IFA was that they would be found by the Mumbai or Delhi police because their names were in a police database, which would be consulted during tenant verification. The RAD addressed this argument and found that (i) their names were not in a database because they have no criminal records; (ii) it is difficult to use the database to find someone in India; and (iii) in any case, the police are not equipped to carry out tenant verifications. These findings were supported by evidence, and the RAD did not ignore any important evidence. The Singhs' arguments in this judicial review (focusing on issues and excerpts of evidence that had not been brought to the RAD's attention) do not affect the reasonableness of the findings.

[31] The application for judicial review is dismissed. I agree with the parties that there is no question for certification arising in this case.

JUDGMENT in IMM-2496-19

THE COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

Judge

Certified true translation
This 24th day of April 2020

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2496-19

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