

Federal Court



Cour fédérale

**Date: 20211110**

**Docket: IMM-1164-21**

**Citation: 2021 FC 1219**

**Ottawa, Ontario, November 10, 2021**

**PRESENT: THE CHIEF JUSTICE**

**BETWEEN:**

**RAJWINDER KAUR  
PRITPAL SINGH AND  
HARMEET KAUR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
& IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Applicants are citizens of India. They claimed refugee status in this country based on persecution and sexual abuse suffered in the state of Punjab by the principal Applicant, Rajwinder Kaur. The abuse was perpetrated over a period of several months by someone named

Satpal Singh, a superior from the District Education Office who regularly visited the school where she taught and insisted that she stay after hours.

[2] Rajwinder Kaur and her spouse, the Applicant Pritpal Singh, also allege a fear of harm by police in Punjab, who threatened them when they subsequently complained about the sexual abuse.

[3] The third Applicant, Harmeet Kaur, is their daughter.

[4] The Refugee Protection Division [**RPD**] of the Immigration and Refugee Board of Canada dismissed the Applicants' claim for refugee protection after it found that they have an internal flight alternative [**IFA**] in Mumbai. Their appeal to the Refugee Appeal Division [**RAD**] was not successful.

[5] Before the RAD, the Applicants made two principal submissions. First, they asserted that the RPD breached their right to procedural fairness by not providing a complete audio recording of its hearing. Second, they maintained that the RPD erred in finding that they have an IFA in Mumbai.

[6] On this Application for judicial review, the Applicants allege that the RAD erred in rejecting those submissions. I disagree. For the reasons that follow, this Application will be dismissed.

II. **Issues**

[7] This Application raises the following two issues:

- i. Did the RAD err in concluding that the Applicants' right to procedural fairness had not been breached?
- ii. Did the RAD err in concluding that the Applicants have an available IFA in Mumbai?

III. **Issue #1 - Did the RAD err in concluding that the Applicants' right to procedural fairness had not been breached?**

[8] The Supreme Court of Canada has observed that “procedural issues [...] are to be determined by a court on the basis of a correctness standard of review”: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43. More recently, the Federal Court of Appeal has characterized the meaning of the term “correctness” in the context of procedural fairness in terms of “whether the procedure was fair having regard to all of the circumstances”: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

[9] The Applicants submit that their right to procedural fairness before the RPD was breached because its audio recording equipment malfunctioned for part of their hearing. They maintain that the RPD member therefore had to rely on his memory when he wrote his decision, which was signed more than one month after the hearing took place. They maintain that this

raised the prospect that important parts of their testimony were overlooked by both the RPD and the RAD.

[10] I disagree. As the Applicants recognize, “[a] contention that the incompleteness of the record of the proceeding under review violates the rules of natural justice will succeed only if the record before the reviewing court is insufficient to permit it to dispose of a potential ground of review properly”: *Patel v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 804 at para 34 [*Patel*]. Stated differently:

The existence of a gap in the record does not amount to a breach of procedural fairness on its own. The question is whether the applicant's ability to challenge the decision-maker's findings has been compromised (*Agbon v Canada (Minister of Citizenship and Immigration)*, 2004 FC 356 at para 3).

*Forde v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 80 at para 20. See also *Huszar v Canada (Citizenship and Immigration)*, 2016 FC 284 at paras 17–22.

[11] In my view, the RAD correctly determined that the malfunctioning of the audio recording equipment at the RPD’s hearing did not breach the Applicants’ right to procedural fairness before the RPD and did not compromise their ability to challenge the RPD’s findings on appeal.

[12] In reaching these conclusions, the RAD observed that the malfunctioning of the recording system only affected the first two hours and 13 minutes of the RPD’s hearing. At that point, the RPD advised that the recording system had been fixed and that the facts the Applicants had just presented in their oral evidence and in their Basis of Claim forms would be accepted as true. After the RPD reiterated that it would be accepting the Applicants as credible witnesses, their counsel agreed to proceed with their oral submissions, including in relation to the IFA issue. This

is clearly reflected in the first two pages of the transcript of the RPD's hearing, where counsel confirmed that he was prepared to "go ahead and make submissions," and that he was "ready to give [his] submission on IFA."

[13] In brief, in preparing their reasons on the determinative issue of the availability of an IFA in Mumbai, both the RPD and the RAD had the benefit of a transcript that reflected the entirety of the Applicants' submissions on that issue. Accordingly, the RAD did not err in concluding that Applicants' right to procedural fairness before the RPD had not been breached and that the record was sufficient for the purposes of their appeal. Apart from this procedural fairness issue, that appeal focused entirely on the alleged shortcomings in the RPD's assessment of the IFA issue.

[14] I will simply add in passing that the Applicants have not only failed to *demonstrate* that any information that was relevant to the IFA issue was not before the RAD; they have also failed to even *identify* any such information.

IV. **Issue #2 - Did the RAD err in concluding that the Applicants have an available IFA in Mumbai?**

[15] This issue is reviewable on a standard of reasonableness. In assessing whether a decision is reasonable, the Court will assess whether the decision is appropriately justified, transparent and intelligible. To meet these requirements, the decision must reflect "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the

decision maker”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85 and 99 [*Vavilov*].

A. *The first prong of the IFA test*

[16] The test for an IFA has two parts. In the context of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [**IRPA**], the first prong of the test requires the person applying for protection to demonstrate, on a balance of probabilities, that there is serious possibility of persecution in the area alleged to constitute an IFA: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, at 593 (FCA) [*Thirunavukkarasu*]. In the context of section 97, the claimant must demonstrate that they would likely be personally subjected to a danger described in paragraph 97(1)(a), or to a risk described in paragraph 97(1)(b).

[17] The Applicants submit that the RAD erred in its assessment of this prong of the test by failing to analyse objective evidence within the National Documentation Package pertaining to India’s tenant verification system and its Aadhar identification system. They maintain that the evidence demonstrates that those systems would make it impossible to relocate in India without being traceable by Satpal Singh and the police who threatened them. This is because landlords have a legal obligation to register their tenants in the tenant verification system, which is available at all police stations in India. Information in the Aadhar identification system is also available to police across that country. In addition, when police decide to carry out a tenant verification, the process includes sending the tenant’s identification details to police in that individual’s home village. Based on this, the Applicants assert that it is logical to assume that

there is a reasonable chance that they will be located and persecuted by Satpal Singh or the police, should they be required to relocate to Mumbai. They add that the RAD ought to have given greater weight to their subjective fears in this regard.

[18] In my view, the RAD's analysis of the objective evidence was not unreasonable. After correctly stating the test applicable to the two prongs of the IFA analysis, it observed that the Applicants' subjective fears did not provide a sufficient basis upon which to conclude that Satpal Singh, the police or anyone else would be motivated to pursue the Applicants in Mumbai. In the absence of any objective evidence of such motivation, the RAD held that it is not necessary to consider the means by which the police, Satpal Singh or anyone else might pursue the Applicants. The RAD added that the objective evidence indicates that while police in different states of India cooperate on major crimes, it does not indicate that police in Mumbai cooperate with police in any other state in circumstances such as those described by the Applicants. Moreover, there was no evidence that Satpal Singh has any influence outside his local area or beyond the state of Punjab. Based on the foregoing, the RAD concluded that the Applicants had not met their burden to demonstrate that they face a serious possibility of persecution or a risk contemplated by section 97 of the IRPA in Mumbai.

[19] In my view, it was reasonably open to the RAD to reach that conclusion for the reasons that it gave. This conclusion was appropriately justified, transparent and intelligible. It was also supported by "an internally coherent and rational chain of analysis" and fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Vavilov*, above, at paras 85–86.

B. *The second prong of the IFA test*

[20] For the purposes of both section 96 and section 97 of the IRPA, the second prong of the IFA test requires the Applicants to demonstrate that it would not be objectively reasonable for them to be required to seek refuge in the IFA area, having regard to all of the circumstances, including the Applicants' particular circumstances: *Thirunavukkarasu*, above, at 597. In this regard, the threshold for objective unreasonableness is "very high" and "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to" the area where a potential IFA has been identified: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at para 15. Such conditions must be established based on actual and concrete evidence. Conversely, it is not sufficient "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": *Thirunavukkarasu*, above, at 598.

[21] The Applicants submit that the RAD erred in assessing the second prong of the IFA test because it did not reasonably consider their personal circumstances. These include that they would have to live in hiding in Mumbai and that they cannot speak the languages spoken there. As a result, they would not be able to find employment, particularly given that they are Sikhs who would be living in a predominantly Hindu city. In addition, they maintained that the principal Applicant's mental health is likely to deteriorate there because of her fear of being apprehended by her agents of persecution. Moreover, they stated that the principal Applicant would be deprived of her right to live with dignity and free of discrimination, because a female



who has previously been held in police custody is considered to be a woman of loose morals and poor character in Indian society.

[22] Contrary to the Applicant's position, the RAD's assessment of these issues was not unreasonable. In brief, given the RAD's earlier conclusion that the Applicants' alleged agents of persecution had no motivation to pursue them in Mumbai, it was unnecessary for the RAD to revisit their fear-related claims at the second stage of the IFA analysis. Moreover, the RAD did specifically consider the other personal hardships summarized immediately above. However, it concluded that they did not rise to the level of constituting objectively unreasonable conditions, as described in the jurisprudence: see paragraph 20 above. In the absence of any concrete evidence of such conditions, it was reasonably open to the RAD to conclude that the Applicants had not met their burden with respect to the second prong of the IFA test.

[23] As with the RAD's conclusion in relation to the first prong of the IFA test, its conclusion with respect to this second prong was appropriately justified, transparent and intelligible. It was also supported by "an internally coherent and rational chain of analysis" and fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Vavilov*, above, at paras 85-86.

## V. **Conclusion**

[24] For the reasons set forth above, this Application will be dismissed.

[25] I agree with the parties' position that the legal and factual matrix of this Application does not give rise to a serious question of general importance for certification.

**JUDGMENT in IMM-1164-21**

**THIS COURT'S JUDGMENT is that:**

1. This Application is dismissed.
2. The legal and factual matrix of this Application does not give rise to a serious question of general importance for certification.

"Paul S. Crampton"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1164-21

**STYLE OF CAUSE:** RAJWINDER KAUR, PRITPAL SINGH AND  
HARMEET KAUR v THE MINISTER OF  
CITIZENSHIP & IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 22, 2021

**JUDGMENT AND REASONS:** CRAMPTON C.J.

**DATED:** NOVEMBER 10, 2021

**APPEARANCES:**

Amit Kumar Verma FOR THE APPLICANTS

Erica Louie FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Verma Law Corporation FOR THE APPLICANTS  
Barrister & Solicitor  
Surrey, British Columbia

Attorney General of Canada FOR THE RESPONDENT  
Vancouver, British Columbia