Federal Court  Cour fédérale

Date: 20211220

Docket: IMM-8840-21

Citation: 2021 FC 1445

Ottawa, Ontario, December 20, 2021

PRESENT: Mr. Justice McHaffie

BETWEEN:

DAVINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Overview

[1] Davinder Singh seeks an order staying the execution of his removal to Delhi until this Court has disposed of his application for leave and judicial review [ALJR]. The ALJR seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] dated June 30, 2021 which found Mr. Singh had a number of internal flight alternatives [IFAs] within India and was therefore not a person in need of protection within the meaning of section 97 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 [*IRPA*]. It also seeks an extension of time in which to file the ALJR, since Mr. Singh filed his ALJR over four months after the time limit set by paragraph 72(2)(*b*) of the *IRPA*.

[2] For the reasons below, I conclude Mr. Singh has not established that his ALJR raises a serious issue for determination on the merits. Mr. Singh was recognized as a credible witness and his evidence about being threatened and attacked by drug dealers with connections to local Punjab police was accepted. However, the RAD found he could seek refuge in an IFA within India, and Mr. Singh has raised no serious issue regarding the reasonableness of that decision. I therefore dismiss the motion for a stay of removal.

[3] In doing so, I address the Minister's argument that the stay motion should be dismissed because Mr. Singh's evidence about his continuing intention to challenge the RAD's decision and his explanation for the delay in doing so are inadequate to justify his extension request. The parties made submissions on this issue and made supplementary submissions in response to questions raised by the Court. Having reviewed the relevant jurisprudence, I conclude that on a motion for a stay of removal pending an ALJR that includes an extension request, an applicant must show their extension request raises a serious issue, rather than having to establish the extension is warranted. I am satisfied Mr. Singh has raised a serious issue with respect to his continuing intention and his explanation for the delay, factors the Court considers on an extension of time. However, those factors also include a preliminary assessment of the merits of the underlying proceeding, such that the assessment of the extension request intersects with the assessment of whether a serious issue has been raised on the ALJR for purposes of the three-part

test for a stay. As I conclude that the underlying ALJR does not raise a serious issue, I similarly conclude that the extension request does not raise a serious issue.

II. Issues

[4] Mr. Singh's motion for a stay of removal pending the determination of his ALJR raises the following issues:

A. Should the Court assess Mr. Singh's request for an extension of time in the context of the stay motion, and if so:

   (1) on what standard;

   (2) has Mr. Singh met that standard; and

   (3) what are the consequences, if any, of a positive or negative determination of the extension request?

B. Has Mr. Singh established that he meets the three-part test for a stay by showing that:

   (1) there is a serious issue to be determined on the underlying ALJR;

   (2) he would suffer irreparable harm if the stay is not granted; and

   (3) the balance of convenience favours granting the requested stay?

III. Analysis

A. *Request for an extension of time*

[5] The RAD gave notice of its decision on July 7, 2021 and Mr. Singh received it at some point shortly thereafter. However, this ALJR was not filed until November 30, 2021, over four months after the 15-day deadline set out in paragraph 72(2)(*b*) of the *IRPA*. In his ALJR, Mr. Singh seeks an extension of time pursuant to paragraph 72(2)(*c*) of the *IRPA*, alleging there are special reasons that justify an extension. The relevant parts of section 72 of the *IRPA* read as follows:

Application for judicial review	**Application**
72 (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is, subject to section 86.1, commenced by making an application for leave to the Court.	**72 (1)** Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est, sous réserve de l'article 86.1, subordonné au dépôt d'une demande d'autorisation.
Application	**Application**
(2) The following provisions govern an application under subsection (1):	**(2)** Les dispositions suivantes s'appliquent à la demande d'autorisation :
[…]	[…]

(b) subject to paragraph 169(f), notice of the application shall be served on the other party and the application shall be filed in the Registry of the Federal Court ("the Court") within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;	**b)** elle doit être signifiée à l'autre partie puis déposée au greffe de la Cour fédérale — la Cour — dans les quinze ou soixante jours, selon que la mesure attaquée a été rendue au Canada ou non, suivant, sous réserve de l'alinéa 169f), la date où le demandeur en est avisé ou en a eu connaissance;
(c) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice;	**c)** le délai peut toutefois être prorogé, pour motifs valables, par un juge de la Cour;
[Emphasis added.]	[Je souligne.]

[6] An extension of time to commence an ALJR under the *IRPA* is no mere formality. The short timeline in which to commence proceedings and the requirement for "special reasons" to extend underscore the importance of timely proceedings as part of the proper administration of the *IRPA*. Where an ALJR is commenced after the deadline, "an extension of time is a condition precedent to the consideration of [the] leave application": *Semenduev v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 4717 (FC).

[7] In deciding whether "special reasons" exist to justify an extension under paragraph 72(2)(*c*), this Court has consistently applied the approach described in *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190, [1999] FCJ No 846 (CA) and *Grewal v MEI*, [1985] 2 FC 263 (CA). On this approach, the Court asks whether the applicant has demonstrated

(1) a continuing intention to pursue their application; (2) that the application has some merit; (3) that no prejudice to the respondent arises from the delay; and (4) that a reasonable explanation for the delay exists: *Hennelly* at para 3. These questions guide the Court in determining whether the granting of an extension of time is in the interests of justice. The importance of each question depends on the circumstances of each case, and not all of the questions need necessarily be resolved in the moving party's favour: *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 62; *Pham v Canada (Citizenship and Immigration)*, 2018 FC 1251 at para 27.

[8] These propositions are not controversial. The question becomes how they apply when an applicant seeks a stay of removal pending determination of an ALJR that was filed after the statutory deadline and that therefore needs an extension of time to proceed.

(1) Assessment of an extension request on a stay motion: determination on the merits or serious issue to be tried?

[9] The Minister argues the request for an extension of time should be determined on its merits by the judge hearing the stay motion, reasoning that without the extension, there is effectively no ALJR, and therefore no underlying application to nourish the stay request. Mr. Singh argues that at the stay stage, an applicant need only show a serious issue to be tried with respect to the extension of time, which stands to be determined on its merits at the time the Court decides whether to grant leave.

[10] Both positions have merit. Both also have support in the jurisprudence of this Court.

[11] The Minister points to a number of decisions and orders in which the Court effectively decided the applicant's extension motion at the stay stage: *Mutti v Canada (Minister of Citizenship and Immigration)*, 2006 FC 97; *Myers v Canada (Immigration, Refugees and Citizenship)*, IMM-4680-16 (January 3, 2017); *Algacs v Canada (Citizenship and Immigration)*, 2020 CanLII 19805 (FC); *Aiyegbeni v Canada (Immigration, Refugees and Citizenship)*, IMM-2896-17 (July 4, 2017); *Xiong v Canada (Citizenship and Immigration)*, 2020 CanLII 664 (FC); *Jeong v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 338 at paras 7–15. None of these decisions specifically discusses the standard being applied, and it does not appear that issue was raised before the Court in these cases. However, in each order, the Court's language suggests they are deciding the matter on the merits. In *Mutti*, for example, Justice Tremblay-Lamer found that "the applicant must, for the purposes of the stay motion, also establish that the request for an extension of time is justified" [emphasis added]: *Mutti* at para 2. This language from *Mutti* was cited by the Court in *Algacs*, *Myers* and *Xiong*.

[12] Conversely, in other cases, the Court has held that it need only assess whether there is a serious issue to be tried on the request for an extension: *Semenduev*; *Butt v Canada (Solicitor General)*, 2004 FC 1032 at para 4; *Shaikh v Canada (Citizenship and Immigration)*, 2007 FC 110 at para 28; *Arita v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1019 at para 5; *Flores Vasquez v Canada (Citizenship and Immigration)*, 2011 FC 35 at para 5. In *Semenduev*, Justice Marc Noël, then of this Court, stated that on a stay motion "the Applicant must, in order to satisfy me that it raises a serious issue, also establish that his application for an extension of time raises a serious issue" [emphasis added]. The later decisions identified cite this proposition from *Semenduev*. I note that the Minister originally argued in their written

representations that Mr. Singh "must first demonstrate that his application for an extension of time raises a serious issue," but in oral submissions relied on *Mutti*, *Myers* and *Jeong* to argue that the extension motion had to be decided on its merits and not simply on the serious issue standard.

[13] I note in passing that a number of the foregoing matters were issued by the Court as "speaking orders," that is, orders without a neutral citation, directed to the specifics of a particular matter and often in urgent circumstances given a pending removal. Such orders are generally intended to be given reduced precedential value in light of the manner in which they are issued: *Mhlanga v Canada (Citizenship and Immigration)*, 2021 FC 957 at para 34. Nonetheless, I find them helpful in this case in representing the thinking of the Court in the context of stay motions.

[14] Based on my review of this jurisprudence, it appears that two lines of authority have developed in this Court. One, relying mostly on *Mutti*, appears to decide the extension request on its merits at the time of the stay motion. The other, relying mostly on *Semenduev*, finds that the extension request is part of the "serious issue" analysis and need only be decided on that standard. I am not aware of any Federal Court of Appeal authority on the issue, other than the frequently cited *Toth* case, which I discuss below.

[15] Having considered these lines of authority, I conclude that the *Semenduev* line of authority is more persuasive. I reach this conclusion for the following three reasons.

[16] First, the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*Immigration Rules*] state that the merits of the ALJR and the merits of an extension application should be decided together. Rule 6(1) of the *Immigration Rules* provides that an extension request shall be made in the application for leave. Rule 6(2) then provides that "[a] request for an extension of time shall be determined at the same time, and on the same materials, as the application for leave" [emphasis added]. A stay motion is typically, although not invariably, heard before leave is decided. The materials on a stay motion are also not the same as those on an ALJR, such that deciding the extension request on the stay motion would be contrary to the approach set out in Rule 6(2). I recognize that Rule 6(2) may not preclude an earlier or later determination of the extension motion where circumstances warrant. Indeed, this Court has recognized that where the extension request is not decided at the time leave is granted, it may need to be decided later: see, *e.g.*, *Pingault v Canada (Citizenship and Immigration)*, 2021 FC 1044 at paras 14–16. However, Rule 6(2) indicates the general intention that the merits of the extension request be decided when the merits of the AJLR are decided.

[17] Second, the approach to stays in general as set out by the Supreme Court of Canada in *RJR-MacDonald*, and to stays of removal in particular, as set out by the Federal Court of Appeal in *Toth*, calls for only preliminary and limited review of the merits of the case: *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at pp 334, 337, 348; *Attorney General of Manitoba v Metropolitan Stores (MTS) Ltd, et al*, [1982] 1 SCR 110 at pp 127–128; *Toth v Canada (Minister of Employment and Immigration)*, 1988 CanLII 1420, [1998] FCJ No 587 (CA) at pp 5–7 (CanLII PDF). There is value in applying a consistent approach to the merits of both the extension request and the ALJR proper. The Court will ultimately have to determine

whether leave will be granted, which will include a determination of whether the extension should be granted, as set out above. Assessing whether there are serious grounds on which the ALJR may succeed reasonably includes assessing whether there are serious grounds on which the extension may be granted. In this regard, I am not persuaded that the fact that an extension is a condition precedent to the consideration of the ALJR means that an extension request must be determined on its merits before an ALJR exists to sustain a stay motion. To the contrary, Justice Noël in *Semenduev* referred to an extension as a "condition precedent" to consideration of an ALJR immediately before concluding that an applicant on a stay motion must raise a serious issue on the extension.

[18] In this regard, I return to *Toth*, the leading case confirming that the *Metropolitan Stores/RJR-MacDonald* approach applies to stays of removal. While this Court frequently cites *Toth* in respect of the three-part test for a stay, it is worth noting that Mr. Toth had requested an extension of time within which to apply for leave to appeal: *Toth* at p 3 (CanLII PDF). The Court of Appeal found that the extension request meant that the application for leave did not trigger a statutory stay, but it did not address the merits of the extension request at all. Rather, in addressing the serious issue test, it "expressly refrain[ed] from examining in detail the issues raised by the applicant herein since they will, necessarily, be examined by the panel of the Court that will hear the application for extension of time and the application for leave to appeal" [emphasis added]: *Toth* at p 6 (CanLII PDF).

[19] Third, as a practical matter, it may be difficult for the applicant to fully establish the merits of their extension request, or for the Court to determine that request, in the context of

evidence available at the time of a stay motion. I say this because the request for an extension of time may, as here, raise allegations against a prior consultant or counsel. This Court's protocol and its jurisprudence require an applicant raising allegations against counsel to follow certain requisite steps, including providing counsel with notice of the allegations and an opportunity to respond: *Procedural Protocol re: Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court*, March 7, 2014 [*Procedural Protocol*]; *Shabuddin v Canada (Citizenship and Immigration)*, 2017 FC 428 at para 14. It may be difficult, or even impossible, for an applicant to comply with the *Procedural Protocol* in the limited period in which a stay is prepared, particularly where, as here, the ALJR and associated extension request are filed shortly before the stay motion is filed.

[20] This is not to say that an applicant can simply ignore the issue of an extension of time or fail to file evidence relevant to it. Despite the approach taken by the Court of Appeal in *Toth*, the jurisprudence is replete with instances in which this Court has dismissed a stay motion because the applicant provided no evidence, or no material evidence, to justify their extension request: see, *e.g.*, *Shaikh* at para 33; *Arita* at para 4; *Flores Vasquez* at para 3; *Myers*; *Algacs*; *Kumar v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1196 at paras 7–8; *Pierre v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 887 at paras 1(d)–(e) (serious issue).

[21] In my view, therefore, an applicant on a stay motion must provide sufficient evidence to demonstrate that their request for an extension of time raises a serious issue to be tried. This will generally require evidence directed to the four *Hennelly* factors cited in paragraph [7] above:

continuing intention to pursue, merit to the application, lack of prejudice, and explanation for the delay. The second of these factors, that of merit, leads me to the observation that the assessment of a serious issue in respect of a requested extension will intersect with the serious issue on the merits of the application. The Court will generally not grant an extension of time to pursue an application that has no merit. If an applicant on a stay motion is unable to demonstrate a serious issue to be tried on the merits of their claim, this also points to the conclusion that "special circumstances" do not exist and an extension should not be granted: *Xiong*; *Akpataku v Canada (Minister of Citizenship and Immigration)*, 2004 FC 698 at paras 4, 9–10.

[22] Conversely, if an applicant is able to demonstrate a serious issue on the merits, this will likely also meet this aspect of the *Hennelly* approach to an extension. However, the applicant will still have to raise a serious issue with respect to the extension request as a whole, including notably as to their continuing intention to pursue the application and the explanation for delay.

[23] I leave this issue with the observation that both an extension of time and a stay of removal are discretionary orders issued by the Court in the interests of justice: *Larkman* at para 62; *Grewal* at p 272; *Susal v Canada (Citizenship and Immigration)*, 2021 CanLII 117296 (FC) at paras 3–4 (requirements); *Ogunkoya v Canada (Citizenship and Immigration)*, 2021 FC 679 at para 3. Different, though overlapping, factors are considered in each case, but overall considerations of justice and equity in the circumstances will inform each.

(2) Mr. Singh has not raised a serious issue on his extension request because he has not raised a serious issue on his underlying application

[24] Mr. Singh's affidavit filed on the stay motion addresses his request for an extension of time. He states in his affidavit that he decided "on day one" to challenge the RAD's decision, and told the immigration consultant who represented him before the RAD to challenge the decision. The consultant assured him he would, but did not. Mr. Singh states that he contacted the immigration consultant many times in July, August, and September 2021, and personally visited his office to instruct him to challenge the decision. Once the consultant finally advised that he could not represent Mr. Singh, Mr. Singh sought out other counsel, but language barriers, difficulty in retaining counsel, and his intervening arrest for immigration violations meant he was unable to retain counsel to commence these proceedings until November 27, 2021.

[25] As can be seen, Mr. Singh's request for an extension is largely founded on an allegation against his former representative. Despite the Minister's argument, relying on *Mutti* and *Myers*, that "poor legal representation and ignorance of the law are neither excuses nor justifications for a delay," I am not satisfied that the jurisprudence of this Court establishes that a representative's failure to follow clear instructions, if proven, cannot justify an extension of time to commence an ALJR: see *Esmaili v Canada (Citizenship and Immigration)*, 2013 FC 1161 at paras 18–21, applying *Washagamis First Nation v Ledoux*, 2006 FC 1300 at paras 23–24, 33.

[26] As the Minister underscores, there is no evidence that Mr. Singh has taken any steps pursuant to the *Procedural Protocol* in respect of his allegations against his former representative, although counsel referred to some efforts to contact him. This does raise some

concern, but I accept that this may be due to the short timing involved. Current counsel was retained on November 27, 2021. The ALJR was filed on November 30, 2021. A direction to report was delivered on December 8, 2021, and the applicant's stay motion was filed on the same day. While evidence of some efforts to take steps pursuant to the *Procedural Protocol* would be preferable, I am satisfied that the current evidence before the Court is sufficient to raise a serious issue with respect to Mr. Singh's continuing intention to challenge the RAD's decision and the explanation for the delay.

[27] However, as discussed above, to obtain an extension of time, an applicant must show that their case has some merit: *Hennelly* at para 3. To show that an extension request made under paragraph 72(2)(*c*) of the *IRPA* raises a serious issue to be determined, an applicant must similarly show their ALJR raises a serious issue for determination.

[28] For the reasons I set out below, I conclude Mr. Singh has not shown a serious issue on the merits of his ALJR. As I have noted, where a party is unable to demonstrate some merit to the underlying proceeding, the Court will generally be disinclined to prolong matters by granting a discretionary extension. In the circumstances, I conclude that despite the evidence pertaining to the reasons for delay and continuing intention, Mr. Singh has not shown his request for an extension of time raises a serious issue for determination.

(3) Consequences of a positive or negative determination on an extension request

[29] As set out above, in my view, on a stay motion, an applicant need only show a serious issue on their request for an extension of time to commence an ALJR. If this approach is correct,

the assessment is not a final determination on the merits of the extension request, either positive or negative. Either way, the extension request and the ALJR remain to be determined on their merits. The extension request will ultimately be decided "on the same materials" as the ALJR, namely the materials filed pursuant to Rules 10 to 14 of the *Immigration Rules*.

[30] This being so, I need not decide the other question that I raised with the parties, namely whether the Court granting an extension of time to file an ALJR triggers the automatic stay set out in subsection 231(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. That subsection provides that a removal order is stayed if an ALJR is filed "in accordance with section 72" of the *IRPA* with respect to a decision of the RAD rejecting, or confirming rejection of, a claim for refugee protection. Simply applying for an extension clearly does not trigger the stay, since subsection 231(1) "does not apply if the person applies for an extension of time to file an application": *IRPR*, s 231(4). It is not as immediately clear to me on the language of subsection 231(4) that the stay is not triggered if the Court has granted the extension of time. However, as the Minister submits, Justice Gagné, as she then was, concluded in a speaking order that the automatic stay is not triggered even once an extension is granted: *Kenedy v Canada (Citizenship and Immigration)*, IMM-10071-12 (February 13, 2013).

B. *Mr. Singh has not met the test for a stay of removal*

[31] To obtain a stay of removal, an applicant must show (1) a serious issue to be determined on the underlying ALJR; (2) that they would suffer irreparable harm if the stay is not granted; and (3) the balance of convenience favours granting the stay: *RJR-MacDonald* at pp 348–349; *Toth* at p 5 (CanLII PDF). The Court will assess these elements and the relevant facts, and will

determine whether a stay is just and equitable in all the circumstances of the case: *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at paras 1, 25.

[32] The "serious issue" standard requires the applicant to demonstrate that the issues raised on the ALJR are neither frivolous nor vexatious: *RJR-MacDonald* at pp 335, 348. This must be assessed in the context of the applicable standard of review. Contrary to Mr. Singh's arguments, the RAD's decision is reviewable on the standard of reasonableness, notwithstanding the findings with respect to Mr. Singh's credibility: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. The issue is therefore whether the applicant has raised a serious issue that the RAD's decision is unreasonable since it fails to show the transparency, intelligibility, and justification required of a reasonable decision: *Vavilov* at paras 15, 82–86.

(1) Mr. Singh has not raised a serious issue

(a) *The serious issues must pertain to the ALJR of the RAD's decision*

[33] In oral submissions on this stay motion, Mr. Singh focused on issues with the RAD's rejection of his appeal. However, since Mr. Singh also raised in his written submissions issues with a December 2, 2021 letter from the Canada Border Services Agency [CBSA] declining to consider his deferral request, I will briefly address those arguments. In short, I agree with the Minister that these arguments cannot constitute serious issues for the purposes of justifying a stay.

[34] A stay of removal pending the determination of an application is interlocutory relief granted in the context of the application: *Federal Courts Act*, RSC 1985, c F-7, s 18.2; *Bastien v Canada (Citizenship and Immigration)*, 2021 FC 926 at para 14; *Ogunkoya* at para 6. As the Minister argues, to obtain a stay of removal in respect of a matter under the *IRPA*, a motion must be brought in the context of an ALJR: *Bergman v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1129 at para 17; *Emmanuel v Canada (Public Safety and Emergency Preparedness)*, 2021 CanLII 11765 (FC) at para 2. The issues raised as serious issues must therefore arise from the ALJR and pertain to the decision challenged in the ALJR.

[35] Mr. Singh's ALJR challenges the RAD's decision rejecting his appeal. Mr. Singh requested deferral of his removal pending determination of the ALJR on December 1, 2021, but was advised on December 2, 2021 that that request was premature as he had not been served with a direction to report. On December 8, 2021, Mr. Singh was served with a direction to report, but no subsequent request to defer his removal was made. Therefore, no decision on a deferral request was made and there is no ALJR in respect of a refusal of a deferral request.

[36] The existence of a serious issue must be determined with reference to the ALJR in which the stay motion is brought, namely Mr. Singh's ALJR of the RAD decision: see, *e.g.*, *Dabar v Canada (Citizenship and Immigration)*, 2019 CanLII 1185 (FC); *Serinken v Canada (Public Safety and Emergency Preparedness)*, 2021 CanLII 56943 (FC). Mr. Singh's various arguments in respect of the CBSA's refusal to decide the premature deferral request are not relevant to the current ALJR and cannot constitute serious issues for determination for the purposes of this motion.

[37] For the same reasons, Mr. Singh's arguments about restrictions and quarantine requirements recently implemented in India due to the COVID-19 pandemic cannot constitute serious issues going to the reasonableness of the RAD's decision. While such issues may be relevant to irreparable harm, matters that were not raised before the RAD, or that arose subsequently, cannot affect the reasonableness of the RAD's decision.

(b) *The RAD's decision*

[38] Mr. Singh's claim for refugee protection stems from being attacked and threatened by drug dealers. Mr. Singh, a farmer, fired an employee he suspected of being involved in selling drugs. He was later attacked and threatened by drug dealers, and went into hiding in the state of Uttar Pradesh. He alleges that men continued to look for him and that police who were connected with the drug dealers, were looking to arrest him on false charges of being involved in the drug trade. The Refugee Protection Division [RPD] found Mr. Singh to be a generally credible witness, and accepted that after Mr. Singh fired the employee "[h]e was threatened, harassed, and assaulted by drug dealers, who may have connections with local police in the Punjab."

[39] The RAD confirmed the RPD's finding that despite these facts, Mr. Singh had an IFA in Lucknow, Mumbai, or Delhi. The RAD considered the two established prongs of the IFA analysis: (i) whether Mr. Singh would face a danger described in section 97 of the *IRPA* in the IFA; and (ii) if not, whether it would be unreasonable in all of the circumstances to relocate to the IFA: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA). The RAD found that Mr. Singh had not shown errors in the RPD's analysis of the IFA. With respect to the first branch, the RAD considered issues of population; motivation on

the part of the Punjab police to locate Mr. Singh; ability of the Punjab police to locate him; and means and motivation on the part of the drug gang to locate him. On the second branch, the RAD considered Mr. Singh's arguments about his education, occupation, religion, and employability, but concluded that the challenges he identified did not meet the "very high threshold" for the unreasonableness test: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at para 15.

(c) *Mr. Singh's arguments do not raise a serious issue*

[40] In my view, the various arguments identified by Mr. Singh do not raise a serious issue as to the reasonableness of the RAD's decision.

[41] With respect to the first prong of the IFA test, Mr. Singh argues the RAD ignored evidence about police searching for him. I disagree. The RAD clearly considered and addressed the evidence cited, and concluded it was insufficient to establish that the police would be motivated to find him in the IFAs, particularly in the absence of any arrest warrant. There is no serious issue that this was an unreasonable finding by the RAD liable to be disturbed by the Court on judicial review. Contrary to Mr. Singh's arguments, this does not suggest that the RAD required him to tender evidence that could not reasonably be provided or imposed an improper burden of proof. It simply means that the RAD examined the evidence that was before it and reasonably concluded that it did not establish the degree of police motivation Mr. Singh argued it did.

[42] Mr. Singh also argues the RAD failed to consider one of the grounds of appeal he raised, namely that the evidence of the drug dealers pursuing him to Moradabad, Uttar Pradesh indicates they are motivated to locate him in the IFAs. However, the RAD plainly dealt with this argument at paragraphs 28–30 of its decision. Mr. Singh has not satisfied me there is a serious issue that the RAD's decision on this point was unreasonable, either for failing to consider a central argument or for showing a fundamental gap in the chain of analysis.

[43] Mr. Singh further argues that the RAD's analysis of the Punjab police's ability to locate him in the IFAs was inconsistent with, and failed to follow, a jurisprudential guide identified by the IRB in RAD File MB8-03939: *X (Re)*, 2019 CanLII 135199 (CA IRB). In particular, Mr. Singh argues that the RAD in *Re X* made findings regarding the possibility of police using the tenant verification system in India to locate an individual: *Re X* at para 54. There are three difficulties with this argument. First, contrary to Mr. Singh's assertion, the identified decision of the RAD has not been identified as a jurisprudential guide pursuant to paragraph 159(1)(*h*) of the *IRPA*. It has only been identified on the IRB website as a "decision of interest." Mr. Singh did not raise this decision to the attention of the RAD, and the RAD cannot be faulted for not discussing it. Second, the RAD's analysis in Mr. Singh's case is not inconsistent with that in *Re X*. In that case, the RAD concluded that "the assessment of the availability of an IFA needs to be dealt with on a case-by-case basis" in part because the evidence in the IRB's national documentation package [NDP] for India is divided: *Re X* at para 44. The RAD in that case ultimately concluded there was an IFA because Punjab police were not motivated to find the appellant even though there was a "chance" he could be found through the tenant verification system. In Mr. Singh's case the RAD similarly undertook a case-by-case analysis, finding both

that the Punjab police were not motivated to find him and that the NDP evidence did not show the Punjab police would be able to locate him. A slightly different assessment of the chances of being found through the tenant verification system does not create unreasonableness. Third, the ultimate question is whether the RAD's analysis of the evidence material to the IFA analysis was unreasonable. I agree with the Minister that the RAD conducted a thorough consideration of the evidence in the NDP on the relevant issues, and that Mr. Singh has not raised a serious issue that its analysis was unreasonable.

[44] With respect to the second prong of the IFA test, Mr. Singh challenges the RAD's conclusion that it was not unreasonable for Mr. Singh to move to the IFAs. He notes his limited education and language, his occupation as a farmer, and the high cost of housing in the identified IFA cities. He argues that he will be effectively forced to live in an unsafe slum in one of these cities, which is not reasonable. In essence, Mr. Singh asks this Court to reassess and reweigh the evidence and arguments he put forward on the second prong before the RPD and the RAD and reach a different conclusion. That is not the task of the Court on judicial review.

[45] Having reviewed these arguments and the RAD's decision carefully, in light of the deferential standard applicable on judicial review and the very high threshold applicable on the second prong of the IFA test, I cannot conclude that Mr. Singh's arguments raise any serious issue that might possibly succeed on the merits of his ALJR.

[46] As Mr. Singh has not identified a serious issue to be determined on his AJLR, he cannot satisfy the requirements of the three-part test for a stay, regardless of the Court's assessment of

irreparable harm or the balance of convenience. Mr. Singh's motion for a stay will therefore be dismissed.

[47] Finally, in the interests of consistency and in accordance with subsection 4(1) of the *IRPA* and subsection 5(2) of the *Immigration Rules*, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

IV. Conclusion

[48] The motion for a stay of removal is therefore dismissed.

ORDER IN IMM-8840-21

THIS COURT'S ORDERS that

1. The motion for a stay of removal is dismissed.

2. The style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8840-21
STYLE OF CAUSE:	DAVINDER SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	DECEMBER 15, 2021
ORDER AND REASONS:	MCHAFFIE J.
DATED:	DECEMBER 20, 2021

APPEARANCES:

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