

Federal Court



Cour fédérale

Date: 20220922

Docket: IMM-4481-21

Citation: 2022 FC 1322

Ottawa, Ontario, September 22, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**PARMINDER SINGH
SANDEEP KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Parminder Singh and Sandeep Kaur [collectively the Applicants] are husband and wife. They are citizens of India.

[2] The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed the determination of the Refugee Protection Division of the IRB that the Applicants are neither Convention refugees nor persons in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[3] The Applicants are supporters of the Khalistan movement, which seeks to establish an independent homeland for Sikhs in the Punjab region of India and Pakistan. They claim to fear persecution by the Indian National Congress, a prominent political party in India also known as the Congress Party [CP]), and by the police.

[4] The RAD found that the Applicants are not in need of Canada's protection because they have an internal flight alternative [IFA] within India. The RAD applied the correct legal test for determining the availability of an IFA, and reasonably found the Applicants would face no serious possibility of persecution in New Delhi.

[5] The application for judicial review is dismissed.

II. Background

[6] The Applicants arrived in Canada on December 17, 2017 and sought admission as tourists. When they were refused entry, they initiated refugee claims.

[7] While living in India, the Applicants joined a political party called Shiromani Akali Dal Badal [SAD-B], which they say caused them to be targeted by the CP. According to Mr. Singh, he and his uncle were attacked by CP members on March 7, 2016, and warned to stop supporting the SAD-B.

[8] Mr. Singh reported the incident to the police on March 9, 2016. He was told it would be investigated, but nothing materialized. He made further enquiries of the police on March 15, 2016, but to no avail.

[9] Mr. Singh continued his involvement in the SAD-B. On January 10, 2017, he was canvassing for the party when he was confronted by two CP members. Mr. Singh says he again reported the incident to the police, but they refused to take any action on the pretext that there were upcoming local elections. He then began to receive threatening phone calls.

[10] The Applicants' residence was raided by the police in September 2017. Mr. Singh was not home at the time, but Ms. Kaur was detained. Mr. Singh surrendered himself into police custody in order to secure the release of his wife. He says he was beaten, mistreated and questioned about his opposition to the CP. He was released on October 3, 2017 after his father paid a bribe.

[11] Mr. Singh says that his father was arrested in India in July 2019. His father was told that Mr. Singh had joined a terrorist group in Canada, and the police were arresting him in his place. Mr. Singh's father secured his release with the assistance of a village leader.

[12] In September 2020, the Applicants joined Sikhs for Justice, a secessionist group based in the United States of America. In November 2020, the group conducted an unofficial referendum to seek independence for the State of Punjab.

[13] Sikhs for Justice is banned in India. The Applicants believe that their registration for the referendum caused them to be labelled terrorists by the Indian authorities. They therefore claim to fear police throughout India, and also persecution at the hands of Hindu extremists in the proposed IFA of New Delhi.

[14] The RPD expressed doubts about the credibility of both Mr. Singh and Ms. Kaur, and also found they would have a viable IFA in New Delhi.

[15] Mr. Singh argued that New Delhi would not be a viable IFA, because he could be traced by the police to any location in India. He would have to use an identity card to secure accommodation. The RPD acknowledged the existence of a tenant verification system, but found that it is not centralized and many police stations do not respond to requests for verification.

[16] Mr. Singh noted that he only speaks Punjabi, and said he would struggle to find employment and adjust to life in New Delhi. The RPD found that Punjabi is one of the dominant languages of New Delhi. While Mr. Singh has only a Grade 10 education, the RPD held that he has transferrable skills in farming and as a labourer.

[17] The RPD rejected the Applicants' refugee claims on October 9, 2020. They appealed to the RAD. The RAD reversed some of the RPD's adverse credibility findings, and accepted on a balance of probabilities that Mr. Singh had been detained in India. However, the RAD confirmed the RPD's finding of an IFA in New Delhi, and dismissed the appeal on June 3, 2021.

III. Issue

[18] The sole issue raised by the application for judicial review is whether the RAD's decision was reasonable.

IV. Analysis

[19] The RAD's decision is subject to review against the standard of reasonableness. The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 100).

[20] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86).

[21] The test for a viable IFA is well-established (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 707 (FCA) at paras 5-6, 9-10): first, the IRB must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country where it finds an IFA to exist; and second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there. Both prongs of the test must be satisfied.

[22] The Applicants challenge the RAD's findings only with respect to the first prong of the IFA assessment: whether they would face a serious possibility of persecution in New Delhi.

[23] The Applicants argue that the RAD applied the wrong legal test for determining an IFA. The RAD found there was no evidence that the CP had the power, connections or means to locate the Applicants in New Delhi. Similarly, the RAD found there was no evidence the Applicants "are or would be" a target of Indian authorities. In addition, the RAD found the tenant verification system was "unlikely" to result in the Applicants being located in New Delhi.

[24] The Applicants say they were not required to prove, on a balance of probabilities, that they would be subject to persecution (citing *Adjei v Canada (Minister of Employment and Immigration)*, 1989 CanLII 9466 (FCA) [*Adjei*] at para 5). They maintain that the standard of proof applied by the RAD was higher than the "serious possibility" test prescribed by law.

[25] The same argument was considered and rejected by Justice Angela Furlanetto in *Antony v Canada (Citizenship and Immigration)*, 2022 FC 991 (at paras 23-24):

In [*Adjei*] at paragraph 8, the Federal Court of Appeal [FCA] described the test as a “reasonable” or even “serious possibility” of persecution as opposed to a mere possibility. The FCA recently affirmed the “reasonable chance”, “reasonable possibility”, and “serious possibility” framing of the test in *Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 at para 4.

When read as a whole, it is clear that the RAD cited and applied the proper legal test consistently throughout the Decision and referred only to a “moderate risk” of discrimination [...].

[26] Similar considerations arise here. The RAD stated the legal test correctly at paragraph 11 of its decision. While the RAD observed that many of Applicants’ assertions lacked a sufficient (or indeed any) factual foundation, this does not undermine the validity of its conclusion: “[...] I find on a balance of probabilities, that there is no serious possibility of the Appellants being persecuted or facing any section 97(1) risks in New Delhi.” This is the correct legal test.

[27] The Applicants also challenge the RAD’s finding that only high profile or very active supporters of Sikhs for Justice are targeted by the Indian authorities. They say the documentary evidence and Mr. Singh’s own experience suggest otherwise. They note that Mr. Singh’s father was arrested in his place in July 2019, and Mr. Singh was labelled a terrorist. They say that terrorism is a serious offence that would lead the police in different jurisdictions to exchange information.

[28] The Respondent notes that there is no evidence Mr. Singh has been charged with a terrorism-related offence in India. The RAD reasonably found that neither of the Applicants has a political profile that would cause them anything more than localized problems in Punjab.

[29] The RAD's conclusion that members of the CP and the police would have no reason to pursue the Applicants if they relocated to New Delhi was reasonably supported by the evidence. There was nothing to corroborate the Applicants' claim that they are currently wanted by the police, or that their registration for the unofficial referendum has come to the attention of the Indian authorities.

V. Conclusion

[30] The application for judicial review is dismissed. None of the parties proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4481-21

STYLE OF CAUSE: PARMINDER SINGH AND SANDEEP KAUR v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN TORONTO
AND OTTAWA, ONTARIO

DATE OF HEARING: AUGUST 10, 2022

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: SEPTEMBER 22, 2022

APPEARANCES:

Micheal Crane FOR THE APPLICANTS

Neeta Logsetty FOR THE RESPONDENT

SOLICITORS OF RECORD:

Micheal Crane FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario