Federal Court  Cour fédérale

Date: 20231124

Docket: IMM-8972-22

Citation: 2023 FC 1560

Ottawa, Ontario, November 24, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

LAKHWINDER SINGH
ARVIN SINGH
AMANDEEP KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Lakhwinder Singh, his wife, Amandeep Kaur, and their son, Arvin Singh, are citizens of India. They seek judicial review of a decision by the Refugee Appeal Division [RAD], dated August 22, 2022, dismissing their appeal and confirming the decision of the Refugee Protection Division [RPD] rejecting their claim for refugee protection [Decision].

The RAD found that they are neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicants arrived in Canada in 2017, and claimed refugee protection in 2019. The Applicants allege they fear a legislative member of the ruling Congress Party, his goons, and the police in Punjab on the basis of Mr. Singh's imputed political opinion as a supporter of the Shiromani Akali Dal Badal Party [SADB Party]. The determinative issue for the RPD and the RAD was the availability of a viable internal flight alternative [IFA] in New Delhi.

[3] The Applicants submit that the Decision is unreasonable on two principle grounds. First, the RAD erred in not considering Mr. Singh's father's affidavit and recognizing that ongoing enquiries were being made by the police as to their whereabouts. Second, the RAD failed to properly evaluate the documentary evidence and thus erred by concluding that Mr. Singh's arrest was extra-judicial rather than arbitrary. The Applicants plead that Mr. Singh's arrest was arbitrary, rather than extra-judicial, and therefore their information is in the Crime and Criminal Tracking Network and Systems [CCTNS] database meaning they can be tracked anywhere in India.

[4] The Respondent submits that Mr. Singh was simply a supporter and volunteer for the SADB Party, who never held any office or position in the party. The Respondent pleads that Mr. Singh even conceded that he would not be known outside his region. The Respondent submits that a vague reference to "an old quarrel" in an older affidavit from Mr. Singh's father is

insufficient to demonstrate that the RAD erred in finding that there was no evidence that the police had enquired about the Applicants' whereabouts.

[5] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicants have failed to persuade me that the RAD's Decision is unreasonable. For the reasons below, this application for judicial review is therefore dismissed.

II. Standard of Review

[6] The parties agree that the standard of review is reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). It is the Applicants, the parties challenging the decision, who bear the onus of demonstrating that the RAD's Decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[7] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent

exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125). A reasonableness review also is not a "line-by-line treasure hunt for error," the reviewing court simply must be satisfied that the decision maker's reasons "add up" (*Vavilov* at paras 102, 104).

III. Analysis

[8] As noted above, the determinative issue for both the RPD and the RAD was the existence of a viable IFA. If a refugee claimant has a viable IFA, this will negate a claim for refugee protection under either section 96 or 97 of the IRPA, regardless of the merits of other aspects of the claim (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 7). It is the Applicants who bear the burden of demonstrating that a proposed IFA is not viable.

[9] The test for establishing the viability of an IFA is two-pronged. Both prongs must be satisfied in order to make a finding that a claimant has an IFA. The first prong consists of establishing, on a balance of probabilities, that there is no serious possibility of the claimant being subject to persecution in the proposed IFA. In the context of section 97, it must be established that the claimant would not be personally subjected to a section 97 danger or risk in the proposed IFA. The second prong requires that the conditions in the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including of the claimant's personal circumstances, for the claimant to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 597-598; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at

paras 10-12; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 9; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17; *Ifaloye v Canada (Citizenship and Immigration)*, 2021 FC 1110 at para 14). The onus is on the Applicants to negate either of the two prongs (*Chitsinde v Canada (Citizenship and Immigration)*, 2021 FC 1066 at para 21).

[10] At issue in the present case is whether the agents of persecution have the "means and the motivation" to find the Applicants. Under the first prong of the IFA test, a refugee claimant may argue that they will remain at risk in the proposed IFA location from the same agent(s) of persecution who had originally put them at risk. In such cases, and as was the case here, the risk assessment will consider whether the agent(s) of persecution "could, and would, cause harm to the claimant in the IFA, that is, whether they have the 'means' and 'motivation' to do so." (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8). The means and motivation of the agent(s) of persecution is therefore one element to be assessed by the decision maker (*Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21 [*Adeleye*]). This assessment is a prospective analysis that is considered from the perspective of the agents of persecution, not from the claimant's perspective (*Adeleye* at para 21; *Aragon Caicedo v Canada (Citizenship and Immigration)*, 2023 FC 485 at para 12).

[11] Having considered the Applicants' evidence, the analysis of the means and motivation of the agents of persecution contained in the Decision, and the submissions of the parties, I have not been persuaded that the RAD committed a reviewable error. The Applicants' arguments are, in my view, an impermissible request to re-assess the evidence considered by the RAD (*Vavilov* at

para 125). Ultimately, I find that the RAD's assessment of risk, namely whether the Punjab police had the means and motivation to find and harm the Applicants in New Delhi, to be justified in light of the record before it. The Applicants are simply seeking to have this Court reweigh the evidence and come to a different conclusion.

[12] Turning to the Applicants' argument on the CCTNS, there was much debate during the hearing as to the capabilities of the system and what categories of data is recorded therein. The Applicants allege that the RAD failed to appreciate that the arrest was an arbitrary but legal arrest, rather than an extra-judicial one. The Applicants emphasize that Mr. Singh's fingerprints were taken when he was detained by the police, and thus the RAD ought to have addressed this fact in the context of the documentary evidence. It is the Applicants' submission that if fingerprints were taken, they would have been stored in the database.

[13] The RAD conducted a lengthy and detailed analysis of the Applicants' arguments on the CCTNS and the nature of Mr. Singh's detention. The RAD considered that Mr. Singh's evidence was that he was fingerprinted, photographed and forced to sign blank papers. The RAD referred extensively to the National Documentation Package [NDP] on India and considered the profile of Mr. Singh. The RAD concluded that the RPD was correct to find that the Applicants had not provided any trustworthy or reliable evidence that the agents of persecution are motivated or have the means to locate them in New Delhi.

[14] I have considered the portions of the NDP raised by the Applicants, however, I am not persuaded that the RAD ignored contradictory documentation such that the Decision becomes

unreasonable. The RAD considered the Applicants' arguments on the CCTNS and provided intelligible and justified reasons as to why it found that Mr. Singh would not be registered in the database. I see no error that warrants this Court's intervention.

[15] As to the Applicants' submissions on the motivation of the police to locate them, I agree with the Respondent that it was reasonable of the RAD to conclude there was simply insufficient credible evidence that the police were looking for the whereabouts of the Applicants. The RAD considered the affidavits, noted that they were silent on key points, and concluded that, contrary to the submissions of the Applicants, they had not demonstrated that the police authorities had the means and the willingness to locate them.

[16] As noted by the Respondent, the Applicants had submitted further affidavits which the RAD accepted, and they had every opportunity to include evidence of the police authorities' motivation to locate them. The RAD was entitled to conclude as it did, despite the vague reference to an "old fued [*sic*]" and "old quarrel" in two affidavits.

IV. Conclusion

[17] For the foregoing reasons, I conclude that the Decision meets the standard of reasonableness as set out in *Vavilov*. This application for judicial review is therefore dismissed.

[18] No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-8972-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' application for judicial review is dismissed; and

2. No question is certified.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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