

Federal Court



Cour fédérale

Date: 20231124

Docket: IMM-12795-22

Citation: 2023 FC 1558

Montréal, Quebec, November 24, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

**VEERPAL SINGH
FATEHDEEP SINGH
MANJINDER KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Veerpal Singh accompanied by his wife, Ms. Manjinder Kaur, and their child, Fatehdeep Singh, are seeking judicial review of a decision dated November 18, 2022 [Decision] whereby the Refugee Appeal Division [RAD] dismissed their appeal and confirmed

the Refugee Protection Division's [RPD] decision refusing their refugee claim. Their claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] was rejected because they have not demonstrated that Mr. Singh is perceived to be linked with Sikh militants, and viable internal flight alternatives [IFAs] exist for them in Delhi, Mumbai, and Kolkata in their country of citizenship, India.

[2] Mr. Singh and his family are asking the Court for an order setting aside the Decision. They submit that the RPD and the RAD erred by failing to properly consider their family profile as Sikhs in its assessment of viable IFAs in India. Furthermore, they claim that the RAD erred in its determination of certain credibility findings, notably with regard to the allegations of Mr. Singh's involvement in Sikh militancy.

[3] For the following reasons, I will dismiss this application for judicial review. While the evidence establishes that Mr. Singh and his family have experienced hardship and persecution in the state of Punjab in India, the RAD's Decision was responsive to the evidence and its findings regarding the viability of IFA locations elsewhere in India are defensible based on the facts and the law.

II. Background

A. *The factual context*

[4] In October 2018, Mr. Singh arrived in Canada with his family, and they claimed refugee protection. Their claim was based on political and religious grounds. More specifically, they alleged that the Punjab police and members of radical groups in the state of Punjab have targeted

and persecuted them for their political and religious association with the Dera Sacha Sauda [DSS] and its leader, Gurmeet Ram Rahim Singh.

[5] In their refugee claim, Mr. Singh and his family described receiving multiple threats from the Akalis, a radical Sikh group, and from Congress, a radical political party in Punjab, prior to a state election, to force them to declare their votes in favour of the Congress party. However, Mr. Singh and his family opposed this party for political and religious reasons. Shortly thereafter, the Congress party came into power in Punjab.

[6] Mr. Singh said that he was then taken into police custody on numerous occasions. Mr. Singh stated that he was beaten by police officers for not having supported the Congress party, and that his family was forced to pay a bribe to have him released. While he was detained, Mr. Singh had his fingerprints and photo taken. Later, Mr. Singh and his family attended a protest that took place in relation to the conviction of DSS leader, Gurmeet Ram Rahim Singh, on rape charges. At the protest, the Punjab police and the Akalis once again identified them as DSS supporters. Mr. Singh said that they were again beaten by the police at the protest. Subsequently, Mr. Singh and his family began receiving more threats, their house was vandalized, Mr. Singh and Ms. Kaur were beaten, and Congress and Akali “goons” raped Ms. Kaur. They fled to Delhi shortly thereafter, and subsequently came to Canada.

[7] Moreover, Mr. Singh alleged that the Punjab police perceived him to be linked to Sikh militants — a fact he claims to have become aware of after his arrival in Canada. In that regard, Mr. Singh stated that, after he and his family fled their village for Delhi, the police attended his mother’s home and accused him and his family of joining Sikh militants.

B. *The RPD Decision*

[8] Mr. Singh and his family's claim for refugee protection was heard by the RPD in February 2022, and rejected on March 7, 2022. In its decision, the RPD found them credible concerning their fear of the Punjab police and political goons in their village and the neighbouring city of Tanda, because of their support of DSS. The RPD also found that Mr. Singh and his family had established the central elements of their refugee claim and that, on a balance of probabilities, their subjective fear was credible.

[9] However, the RPD found that their perceived link to Sikh militants was not credibly established. The RPD determined that the testimony of Mr. Singh with respect to his alleged involvement in Sikh militancy was vague and evolving. Furthermore, the RPD gave little weight to the affidavit of their village's sarpanch — the head of the village council —, which supported their claims, as it found that the sarpanch did not have first-hand knowledge of the allegations made in his affidavit. The RPD similarly found it bizarre that Mr. Singh did not submit an affidavit from his mother describing her interactions with the police, to which he replied that his mother was uneducated and forgot everything. The RPD authorized Mr. Singh to submit an affidavit from his mother after the hearing, but gave it limited weight due to various inconsistencies found in her written testimony, and Mr. Singh's testimony about her memory loss.

[10] The RPD further found that Mr. Singh and his family could safely and reasonably live elsewhere in India, and identified viable IFAs for them in Delhi, Mumbai, and Kolkata. Mr. Singh and his family appealed the RPD's decision.

C. *The RAD Decision*

[11] On November 18, 2022, the RAD dismissed the appeal and determined that the RPD was correct in finding that Mr. Singh and his family were neither Convention refugees nor persons in need of protection.

[12] With respect to the adverse credibility finding relating to the perceived involvement of Mr. Singh with Sikh militants, the RAD determined that the RPD was justified in giving the sarpanch's affidavit and Mr. Singh's testimony less weight. The RAD also agreed with the RPD that the lack of an affidavit from Mr. Singh's mother at the onset of the hearing was noteworthy. To this effect, at paragraph 31 of the Decision, the RAD cited *Chunza Garcia v Canada (Citizenship and Immigration)*, 2014 FC 832 [*Chunza Garcia*], which states that when "a claimant has, or may readily obtain, corroborative evidence in situations where it would normally be filed with the adjudicative tribunal to bolster the weight of otherwise bare allegations, it is expected that the party will adhere to the ordinary reliability requirements to introduce the best evidence in support of their case. If they fail to do so, less weight (or none) may be attributed to the statement" (*Chunza Garcia* at para 17).

[13] The RAD further agreed with the RPD's findings that the affidavit of Mr. Singh's mother should be accorded limited weight given the inconsistencies between the timeline of events she described and the testimony of Mr. Singh. For instance, the mother's affidavit stated that her interaction with the Punjab police occurred "recently". However, the affidavit was written in 2022 — three years after Mr. Singh and his family arrived in Canada — and not shortly after they fled their village.

[14] The RAD similarly found Mr. Singh's testimony surrounding his perceived link to Sikh militants to be vague and evolving. On this front, the RAD noted contradictory evidence presented as to when and how Mr. Singh's family members in India were contacted by the Punjab police about these alleged accusations. When asked about the police linking him and his family to Sikh militants and his mother's recollection of events, Mr. Singh testified that his mother had a memory problem and could not recall most things, including that he had left for Canada.

[15] With respect to the IFA analysis, the RAD went through the two-pronged test to determine whether there was a viable IFA, and concluded that the RPD did not err in its analysis. To this effect, the RAD determined that there was no risk of persecution based on Mr. Singh and his family's association with DSS, given they were not heavily involved in this movement.

[16] Furthermore, the RAD concluded that the agents of persecution were more concerned about searching for Mr. Singh and his family in their village and found insufficient evidence to suggest that the persecutors would be motivated to search for them outside the state of Punjab. The RAD further noted that India does not have a centralized registration system in place that would allow police to check the whereabouts of people in their own state, let alone in other states. The RAD also observed that Mr. Singh and his family did not demonstrate a likelihood that their names appear on a list of wanted persons in Punjab, nor in India's Crime and Criminal Tracking Network and Systems [CCTNS]. In its IFA analysis, the RAD acknowledged the possibility of Mr. Singh being registered in the Indian tenant registration system, but determined that this did not pose a sufficient enough risk of being found by the agents of persecution.

[17] The RAD finally agreed with the RPD on the fact that Mr. Singh and his family would not need to go into hiding in the IFA locations and determined that, in its analysis, the RPD did not fail to consider the stigma of the attacks they suffered. As such, the RAD found no forward-facing risk of torture and determined that Mr. Singh and his family would be able to support themselves, find work and housing, and access services in the IFA locations.

D. *The standard of review*

[18] It is not disputed that the standard of reasonableness applies to the Decision under review and to findings regarding the existence of a viable IFA (*Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 [*Valencia*] at para 19; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 14; *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62 at para 6; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 [*Singh 2020*] at para 17; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11). This is confirmed by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 7).

[19] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85; *Mason* at

para 64). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[20] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention”, seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13), without “reweighing and reassessing the evidence” before it (*Vavilov* at para 125).

[21] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

III. Analysis

A. *Did the RAD fail to properly consider Mr. Singh and his family’s profile as Sikhs?*

[22] Mr. Singh and his family first submit that the RAD erred by failing to take into consideration their complete profile as Sikhs who would be relocating outside of their home state of Punjab. To this effect, they note the rise of religious violence in India directed towards Sikh

communities, and underline that this is particularly prevalent in the current pro-Hindu political context in India. According to Mr. Singh and his family, the documentary evidence highlights that Hindu nationalist groups target Sikhs and persecute them to the extent that they can “face challenges ranging from acts of violence or intimidation, to the loss of political power, increasing feelings of disenfranchisement, and limits on access to education, housing and employment”.

[23] Because of this, they allege that the RAD erred in its analysis of the second prong of the IFA test as it failed to consider their Sikh profile in its analysis and notably, the risks they face in the proposed IFA locations due to their religion.

[24] Mr. Singh and his family also claim that the RAD erred in refusing to give full weight to the affidavit of Mr. Singh’s mother and the corroborative documentary evidence offered by the village sarpanch. They submit that these adverse credibility findings led the RAD to doubt their allegations of involvement in Sikh militancy — which further bolster their claims regarding the unreasonableness of the RAD’s IFA conclusions with respect to their religious identity.

[25] I am not persuaded by these submissions.

[26] There is ample evidence in the record supporting the RAD’s conclusions about the low profile of Mr. Singh and his family in DSS. For example, Mr. Singh was arrested but he was not charged with any offence. Mr. Singh and his family were also able to live in Delhi without any issue, prior to coming to Canada. In addition, Mr. Singh testified that, before leaving India, the Punjab police never accused him of being linked to Sikh militants.

[27] Moreover, in light of the evidence before it, the RAD found that Mr. Singh's own testimony was vague and evolving when testifying about the allegation that the Punjab police accused him of being a Sikh militant. The RAD also assigned low weight to the affidavits submitted by Mr. Singh's mother, because of internal inconsistencies, and by the village sarpanch, because the sarpanch did not have first-hand knowledge of the alleged events. I do not find these conclusions unreasonable.

[28] The weighing of the probative value of evidence is within the expertise of the RPD and the RAD, and Mr. Singh and his family's mere disagreement with the RAD's findings does not warrant the Court's intervention. It is well established that, on matters of credibility and the assessment of facts, the RAD and the RPD are specialized tribunals empowered to assess the plausibility and credibility of testimony insofar as the inferences drawn by the tribunal are not unreasonable (*Aguebor v Minister of Employment and Immigration*, (1993), 160 NR 315 (FCA) at para 4; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 79 at para 41). Mr. Singh and his family have not pointed to any specific omission or error in the RAD's analysis that would justify the Court's intervention.

[29] To be reasonable, a decision must be justified with transparent and intelligible reasons that uncover an internally coherent reasoning (*Vavilov* at paras 86, 99). Here, the RAD has properly explained how it came to the conclusion that the testimonial and documentary evidence submitted by Mr. Singh and his family should be given low weight. The RAD found the mother's affidavit contradictory and less reliable given her memory problems. It similarly found the sarpanch's affidavit less reliable given the lack of first-hand knowledge of the allegations

made against them. These conclusions bear all the attributes of an intelligible, transparent, and internally coherent reasoning.

[30] Ultimately, the arguments presented by Mr. Singh and his family merely express their disagreement with the RAD's evaluation of the evidence and ask the Court to prefer their opinion and interpretation of the evidence to those of the RAD. However, this is not the role of a reviewing court in judicial review.

B. *Did the RAD err in determining the reasonableness of the IFAs in Delhi, Mumbai, and Kolkata?*

[31] I now turn to the alleged failure of the RAD to consider Mr. Singh and his family's religious identity in its analysis of IFA locations in India.

(1) The test on IFA determinations

[32] The test to determine the existence of a viable IFA comes from *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*]. Those decisions from the Federal Court of Appeal state that two criteria must be established, on a balance of probabilities, in order to find that a proposed IFA is reasonable: 1) there must be no serious possibility of the claimant being subject to persecution in the part of the country in which the IFA exists; and 2) it must not be unreasonable for the claimant to seek refuge in the IFA, upon consideration of all their particular circumstances.

[33] In *Singh 2020*, the Court reminded that “the analysis of an IFA is based on the principle that international protection can only be offered to refugee protection claimants in cases where the country of origin is unable to provide to the person requesting refugee protection adequate protection everywhere within their territory” [emphasis added] (*Singh 2020* at para 26). 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).

[34] When an IFA is established, the onus is on the refugee claimant to demonstrate that the IFA is inadequate (*Thirunavukkarasu* at para 12; *Salaudeen v Canada (Citizenship and Immigration)*, 2022 FC 39 at para 26; *Manzoor-Ul-Haq v Canada (Citizenship and Immigration)*, 2020 FC 1077 at para 24; *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paras 43–44).

[35] Mr. Singh and his family contend that the IFA locations are inadequate. To this effect, they state that they fear religious persecution in the proposed IFA locations. They further allege that the RAD failed to consider their religious identity in its IFA determination, and thus erred in its analysis of the second prong of the test.

[36] Again, I do not agree with these contentions.

(2) The first prong of the test

[37] On the first prong of its analysis, the RAD determined that Mr. Singh and his family were not seriously at risk of persecution in any of the three IFA locations, and that there was no real

and concrete evidence of serious risk preventing them from relocating there. In the RAD's view, there was no serious possibility of persecution outside Punjab, and it was neither unreasonable nor unduly harsh for Mr. Singh and his family to resettle in one of the three cities identified.

[38] Several reasons supported the RAD's determination. First, Mr. Singh had a low profile in DSS and his involvement was limited. Second, there was no evidence suggesting that Mr. Singh and his family were being sought by police or goons associated with Congress or Akalis outside the state of Punjab. Third, no official charges were laid against Mr. Singh. On a balance of probabilities, the RAD was satisfied that information about Mr. Singh did not appear on any criminal record with the Punjab police and that he and his family were not persons of interest to the police such that their information would come up in India's CCTNS. In support of its conclusions, the RAD relied on documentary evidence from the National Document Package on India [NDP]. Again, the lack of evidence on the alleged links of Mr. Singh with Sikh militants was a key element in determining that Mr. Singh would not be a person of interest for the Punjab police.

[39] Mr. Singh and his family complain that the RAD failed to address other critical and contradictory documentation in the NDP. This is not a very compelling argument as the RAD acknowledged in its Decision that the evidence in the NDP could be interpreted both ways. In light of Mr. Singh's particular circumstances, the RAD preferred certain evidence regarding the police's inability to locate people, the lack of interstate police communications, and the limits and shortcomings of India's tenant verification system. The RAD also considered evidence specific to the cities contemplated as viable IFAs.

[40] The RAD's IFA findings are essentially factual and are based on its assessment of all the evidence, including the documentary evidence, which includes more than the passages on which Mr. Singh and his family rely. These findings are within the RAD's area of expertise and require a high degree of deference from the Court. Based on all the evidence, I am satisfied that the RAD could reasonably conclude that Mr. Singh and his family had failed to demonstrate, on a balance of probabilities, that they would be at risk in the cities proposed as IFAs. It is not the role of this Court to reassess and reweigh the evidence to reach a conclusion more favourable to an applicant. The role of this Court is to assess whether the Decision bears the hallmarks of reasonableness (*Vavilov* at paras 99, 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). Here, I find that it does. In my view, the RAD assessed the totality of the NDP evidence and simply weighed the evidence differently from what Mr. Singh and his family would have liked.

[41] In sum, Mr. Singh and his family failed to meet their burden of demonstrating their perceived risk of being returned to one of the IFA locations.

(3) The second prong of the test

[42] To satisfy the second prong of the test and determine that an IFA is unreasonable, there must be "actual and concrete evidence of conditions that would jeopardize an applicant's life and safety in travelling or temporarily relocating to the proposed safe area" (*Thirunavukkarasu Ranganathan* at pp 594–595). It is a demanding test. Here, the only evidence submitted by Mr. Singh and his family in this regard is the general documentary evidence that Sikhs face persecution and challenges across India. However, as noted by the Minister, this Court has

determined that with respect to the second prong of the test, simply stating that being “Sikh in India can be a challenge in itself” is not sufficient “to satisfy the stringent second prong of the [IFA] test” (*Major Singh v Canada (Citizenship and Immigration)*, 2020 FC 277 [*Major Singh*] at paras 25–26). In other words, Mr. Singh and his family’s disagreement with the assessment made by the RAD cannot be equated with a failure to take their profile as Sikhs into account.

[43] Further to my review of the Decision, I am satisfied that the conclusions of the RAD concerning the second prong of the IFA test were also reasonable. The RAD considered the threats and attacks made against Mr. Singh and his family and nonetheless determined that the proposed IFA locations were viable. According to the RAD, Mr. Singh and his family would not need to go into hiding, their feared persecutors are unlikely to try to find them or have the means to do so, and on a balance of probabilities, Mr. Singh could find work and housing and access services in the IFA locations. Given this Court’s previous jurisprudence which notes that, for Sikhs from Punjab, settling outside their home state does not lead to any particular difficulties (*Major Singh* at para 26), the RAD did not err in determining that Mr. Singh and his wife had reasonable IFAs in Delhi, Mumbai, and Kolkata.

[44] Throughout the Decision, the RAD’s analysis is intelligible, transparent, and coherent and the reasons demonstrates how it concluded that it is not unreasonable for Mr. Singh and his family to seek refuge in the IFA locations. I can follow the RAD’s reasoning without coming across a fatal flaw in the overall logic, and the reasons contain a line of analysis that could reasonably lead the administrative decision maker from the evidence to the conclusion at which it arrived (*Vavilov* at para 102).

IV. Conclusion

[45] For the reasons set forth above, this application for judicial review is dismissed. I am satisfied that the RAD reasonably considered the evidence in concluding that Mr. Singh and his family had a viable IFA in Delhi, Mumbai, and Kolkata. There are no grounds for the Court to intervene.

[46] No question for certification was proposed, and I agree that none arises.

JUDGMENT in IMM-12795-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.
2. There is no question of general importance to be certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12795-22

STYLE OF CAUSE: VEERPAL SINGH ET AL. v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 4, 2023

JUDGMENT AND REASONS: GASCON J.

DATED: NOVEMBER 24, 2023

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