Federal Court  Cour fédérale

Date: 20231204

Docket: IMM-9101-22

Citation: 2023 FC 1623

Ottawa, Ontario, December 4, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

SULAKHAN SINGH
RAJWINDER SINGH
CHANPREET KAUR
MANDEEP KAUR

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Sulakhan Singh, Rajwinder Singh, Chanpreet Kaur and Mandeep Kaur [Applicants], seek judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision [Decision] of the Refugee Appeal Division [RAD] confirming the determination of the Refugee Protection Division [RPD] that they are not

Convention refugees nor persons in need of protection, because of a finding of Internal Flight Alternative [IFA] in the city of Bengaluru, located in the state of Karnataka.

[2] 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 discharge their burden and demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

I. Factual Background

[3] The Applicants are citizens of India from the district of Jalandhar in the state of Punjab. They are of Sikh confession and fear persecution at the hands of the Indian National Congress, a prominent political party in India also known as the Congress Party, because the Principal Applicant [PA], Sulakhan Singh, was a supporter of an opposing political party, the Shiromani Akali Dal [SAD] party.

[4] The PA alleges having been pressured into joining the Congress Party, but refused. Because of his refusal to support the Congress Party, he was threatened that the police would falsely accuse him of being affiliated with the drug trade and be put in jail.

[5] On March 9, 2019, the police raided the Applicants' house and the police accused the PA of sheltering antinational supporters. After defying the inspector to issue a formal First Information Report [FIR] in order to meet in court, the PA was brought to the police station

where he was tortured for several days, and where his fingerprints were taken and his signature placed on blank papers. The PA was released upon the payment of a bribe.

[6] On April 12, 2019, the police raided the Applicants' house again. As the Applicants already had Canadian visas, they travelled to Canada where they claimed refugee status on May 8, 2019.

[7] On August 29, 2022, the RAD rejected the Applicants' appeal of an RPD decision issued on February 17, 2022. Both the RAD and the RPD held that the Applicants had a viable IFA in the city of Bengaluru, located in the state of Karnataka.

[8] In relation to the first prong of the IFA test, the RAD found that there was not sufficient evidence to find that the Congress Party or the police would still have the motivation to persecute the Applicants now, four years after their departure from India. The evidence demonstrated that the Congress Party was interested in the PA because of his ability to influence people's votes. However, if the PA was located in Bengaluru, there was insufficient evidence that he would be able to influence votes from that location and therefore, the Congress Party would not be interested or have the motivation to persecute him there. The RAD also found that since the Applicants left India in May 2019, and the PA has not been contacted ever since, this reduces the likelihood that the agents of harm would have the motivation to find them in a different state.

[9] The RAD also found that there was insufficient evidence to find that the Congress Party had the means to seek and harm the Applicants in Bengaluru. The RAD held that it was not

likely that the PA's arrest was registered on the Crime and Criminal Tracking Network System [CCTNS]. While the police took his fingerprints and forced him to sign a blank paper, there is insufficient evidence to show that it is likely that the information was registered on the CCTNS because the CCTNS record is for the most heinous crimes.

[10] The RAD also found that there was insufficient evidence that the Applicants would be found through the Tenant Verification System [TVS]. As there is insufficient evidence that the PA's arrest is registered on the CCTNS and both systems are linked, the PA's information is not likely verifiable on the TVS.

[11] Regarding the second prong of the IFA test, the RAD found that the weight of the evidence showed that the Applicants have the ability to work in Bengaluru because of all of their previous work experience. They would also be able to find adequate housing. Finally, the RAD held that there was insufficient evidence of religious discrimination that would be tantamount to the serious harm that constitutes persecution, or that creates undue hardship.

II. Issues and standard of review

[12] The Applicants argue that the Decision is unreasonable. More specifically, the Applicants argue that the RAD committed a reviewable error by basing its IFA analysis and determination on an older and outdated version of the National Documentation Packages [NDP] for India that had already been removed before the RAD issued its decision. The Applicants did not make any argument on the second prong of the IFA test.

[13] The standard of review for the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at paras 7, 39-44). 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; *Mason* at para 8). Reasonableness review is not a "rubber-stamping" exercise; it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). It is the party challenging the decision, who bears 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).

[14] 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 is also 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

[15] The test to determine if an IFA is viable in the claimant's country is set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA). The test is two-pronged: the claimant has an IFA when (1) they will not be

subject to a serious possibility of persecution nor to a risk of harm under subsection 97(1) of the IRPA in the proposed IFA location, and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances.

[16] Both prongs must be satisfied in order to make a finding that a claimant has an IFA (*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 [*Leon*]; *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).

[17] On the first prong of the test, the Applicants bear the onus of demonstrating that the proposed IFA is unreasonable because they fear a possibility of persecution throughout their entire country. In order to discharge its burden, a claimant must demonstrate that they will remain at risk in the proposed IFA from the same individual or agents of persecution that originally put them at risk. The risk assessment considers whether the agents of persecution have the "means" and "motivation" to cause harm to the claimant in the IFA (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8). This assessment must be made by the decision maker, is a prospective analysis, and is considered from the perspective of the agents of persecution, not from the claimant's perspective (*Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 29; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21; *Aragon Caicedo v Canada (Citizenship and Immigration)*, 2023 FC 485 at para 12). The onus is therefore on the Applicants to adduce sufficient evidence or facts to discharge

their burden of proof and demonstrate, on a balance of probabilities, that the agents of persecution have the means and motivation to locate them in the proposed IFA and that therefore, they will be subject to a serious possibility of persecution or to a likelihood of a section 97 danger or risk in the proposed IFA.

[18] For the second prong of the test regarding the reasonability of the refuge in other parts of the country, the threshold is very high and applicants for asylum must present actual and concrete evidence of the existence of conditions that would jeopardize their life or safety if they were to attempt to relocate to that part of the country (*Ranganathan v Canada (Minister of Citizenship and Immigration*)(CA), 2000 CanLII 16789 (FCA); *Jean Baptiste v Canada (Citizenship and Immigration),* 2019 FC 1106 at paras 20-21).

[19] In this case, the Applicants make two substantive arguments, both mostly relating to the first prong of the test only. First, they claim that the RAD failed to properly consider that the PA is a pro-Khalistan supporter. Second, the Applicants filed their appeal with the RAD on February 27, 2022. The RAD issued its decision on August 29, 2022. In the meantime, on June 30, 2022, the NDP for India was updated. The RAD issued its decision on the basis of the NDP existing at the time that the appeal was filed in February 2022 (which was the NDP dated June 30, 2021), instead of the most recent one when it issued its decision in August 2022 (which was the NDP dated June 30, 2022). According to the Applicants, substantive changes were made to the most recent NDP. Had the RAD considered them, along with also a proper consideration of the PA as a pro-Khalistan supporter, the RAD would have concluded that he is at risk anywhere in India. No viable IFA therefore exists.

A. *The RAD's Decision that Bengaluru is a viable IFA is reasonable*

[20] The PA submits that by supporting the SAD party, and having been accused of sheltering "antinational people", he is identified as a pro-Khalistan supporter. The Applicants submit that the RAD failed to properly assess his risk on that basis. The Applicants then assert that the RAD's decision is based on an older version of the NDP and that a new version of the NDP demonstrates that the PA is at risk everywhere in India because he is a pro-Khalistan supporter, and no IFA is viable.

[21] The Applicants note that the RAD ruled, relying on item 12.8 of the NDP dated June 30, 2021, that Sikhs may live peacefully in their communities (item 12.8: "Situation of Sikhs outside the state of Punjab, including treatment by authorities and society; ability of Sikhs to relocate within India; treatment of Khalistan supporters or perceived supporters outside of Punjab" (2017-October 2019), IRB). However, the Applicants then submit that item 12.8 in the updated version of the NDP (which was not analyzed by the RAD) confirms that "antinational" supporters are identical to pro-Khalistan supporters and are persecuted for their imputed political opinion everywhere in India. The Applicants therefore have no viable IFA.

[22] Relying on the case of *Ishak v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 217 at paras 8-9, the Respondent refuted this argument at the hearing. The Respondent argued that the onus was on the Applicants to raise the fact that they were pro-Khalistan supporters or activists before the RAD, and that because they did not submit any specific evidence in that

regard, the RAD could not conclude on a serious possibility of persecution or to a risk of harm throughout India on that basis.

[23] In my view, the PA's Basis of Claim [BOC], while identifying political opinion as a ground to claim refugee status, never clearly articulated that the source of his risk was that he was a pro-Khalistan supporter. His BOC rather emphasizes his risk in relation to goons associated with the Congress Party at the local level, worrying about votes in local elections. Indeed, in his testimony before the RPD, the PA identified the Congress Party, an elected official and their goons as the source of his risk because many votes are "attached" to him and the Congress Party would like the PA to support them and get those votes (Certified Tribunal Record [CTR] at p 514-516, 522). The PA never clearly articulated that the agents of harm were persecuting him because he was a pro-Khalistan supporter.

[24] On the police implication, the evidence is that the police in India "don't spare anyone that is antinational" anywhere in India and may wish to "please the Congress Party" (CTR at p 524). Moreover, at the hearing, the PA testified that there were no viable IFAs in India because the police has identified him as an antinational, and has his ID, fingerprints and signature. Moreover, he could be identified through the CCTNS or the TVS.

[25] In the end, however, the RAD concluded that there was insufficient evidence to find, on a balance of probabilities, that the Congress Party and the police would be motivated to pursue the Applicants if they relocated to Bengaluru. In my view, the RAD properly considered that the PA was a pro-Khalistan supporter, but assessed the risk according to the evidence that was presented

at the hearing before the RPD. The evidence was that the agents of risk were limited to the Congress Party and their goons, and the police in support of the Congress Party. All of the PA's issues in relation to the agents of persecution are about the electoral process, and not about his pro-Khalistan support.

[26] Indeed, the Congress Party's interest in the PA is to get the votes he controlled, not because he is a pro-Khalistan supporter. Moreover, the RAD reasonably held that there was insufficient evidence that the PA can influence votes from Bengaluru and therefore, there is not sufficient evidence that the Congress Party will continue to be interested in the PA if he cannot influence the votes. If the Congress Party is no longer interested in the PA, because he cannot influence the votes from Bengaluru, then the police would not continue to have an interest or be motivated either because, as the PA testified, the police merely wants to "please the Congress Party" (RAD decision at paras 11-13).

[27] Therefore, the Applicants' claim failed because they have not established that the agents of persecution are motivated to persecute them in Bengaluru. In my view, the RAD properly considered the evidence presented and reasonably found that the PA did not have a profile that would cause the Applicants anything more than localized problems in Punjab and that Bengaluru was a viable IFA.

[28] Having reasonably concluded that the Congress Party, its goons, and the police would not, on a balance of probabilities, be motivated to locate and harm the Applicants in Bengaluru, the RAD's inquiry could have ended there (*Leon* at para 23; *Ocampo v Canada(Citizenship and*

Immigration), 2021 FC 1058 at para 28 [*Ocampo*]; *Kandel v Canada(Citizenship and Immigration)* 2021 FC 1293 at paras 16-17; *Kaur v Canada (Citizenship and Immigration)*, 2021 FC 1219 at paras 17-18 [*Kaur*]).

[29] There was no need for the RAD to analyze whether the agents of persecution could have the means to locate the Applicants. Likewise, objective evidence of country conditions, when the agents of persecution have no motivation to pursue the claimant, is of little or no value (*Ocampo* at paras 26-28; *Kaur* paras 17-19). Objective evidence cannot overcome a conclusion of fact that the agent of persecution does not have the motivation to pursue a claimant in an IFA.

[30] The fact that the RAD, in this case, considered an older version of the NDP therefore has no impact on its conclusion on the agents of persecution's motivation. The RAD's decision on lack of motivation is reasonable and dispositive in this case.

B. *The RAD's consideration of an older version of the NDP*

[31] The issue in relation to the NDP is that, according to the Applicants, if the RAD had considered the new version of the NDP of June 2022 (two months before issuing its decision), the RAD would have concluded that the Applicants face a risk everywhere in India. In this case, the Applicants perfected their appeal with the RAD on February 27, 2022, which was based on the existing NDP dating from June 30, 2021. The NDP was amended on June 30, 2022, and the RAD issued its decision on August 29, 2022, almost two months thereafter.

[32] The Applicants submit that the updated version of item 10.13 (item 10.13: “Databases, including the tenant registration (or tenant verification) system, the Crime and Criminal Tracking Network and Systems (CCTNS), and POLNET; police access to these databases and their ability to track individuals; cases of individuals” 7 June 2022, IRB) (of the June 30, 2022 NDP), which the RAD did not assess, confirms that officers now “typically communicate with one another through the use of wireless messaging, such as text messaging and email”, and in “urgent cases, phone or fax is used”. Furthermore, the information contained within the updated version of item 12.8 of the NDP, which the RAD did not assess, demonstrates that pro-Khalistan supporters cannot be said to have a viable IFA anywhere in India.

[33] The Respondent submits that the Applicants have not demonstrated how the updated NDP information is substantively different than the information contained in the NDP of June 30, 2021, with regards to the findings of fact made by the RAD on the availability of an IFA. Moreover, the Respondent submits that the new version of the updated items in the NDP does not confirm that the Applicants are in fact considered terrorists and that their agents of persecution have the motivation and the means to locate them outside Punjab.

[34] In my view, the Applicants’ argument fails in this case because, as stated above, the RAD reasonably held that the agents of persecution have no motivation in locating the Applicants. That finding is dispositive in this matter, regardless of whether the RAD erred in not considering the most recent NDP. Even if the Applicants succeed on that basis, they still have failed to establish that the agents of persecution are motivated to pursue them in the IFA (see Decision of the RAD at para 18).

[35] However, it is important to note that in the Immigration and Refugee Board of Canada *Policy on National Documentation Packages in Refugee Determination Proceedings* (5 June 2019), online: <irb-cisr.gc.ca>, at section 5ii, it is stated that the RAD "will consider the most recent NDP(s) in support of assessing forward-looking risk."

[36] As a result, the RAD ought to have considered the most recent version of the NDP, including its amendments (see *Monzon Gordillo v Canada (Citizenship and Immigration)*, 2023 FC 1529 at para 9). When the RAD does not consider the most recent NDP, the role of the Court on judicial review is to assess whether the updated NDP could have affected the result, in which case the application for judicial review must be allowed (see *Demir v Canada*, 2014 FC 1218 at para 12 [*Demir*]).

[37] Moreover, when considering the most recent NDP, the RAD must also notify the parties if there are material updates on which it intends to rely, and grant the parties the possibility to make additional representations. The Court held in numerous cases that where the RAD considers objective evidence found in an NDP that was not in the perfected record (either an older version or an updated NDP), the RAD must notify the parties of the NDP it intends to rely upon and allow the parties to make submissions. Failure to do so is a breach of procedural fairness (*Zhang v Canada (Citizenship and Immigration)*, 2015 FC 1031 at paras 42-63; *Roy v Canada (Citizenship and Immigration)*, 2013 FC 768 at para 43; *Zheng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1359 at paras 6-13; *Buri v Canada (Citizenship and Immigration)*, 2014 FC 45; *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461 (FCA)).

[38] In this case, the RAD appears to have failed to consider the most recent NDP. The RAD should have relied on the most recent NDP, notified the parties of its intent to do so if there was a material change, and grant the parties the possibility to make submissions on the newly updated information.

[39] However, the RAD's failure to do so in this case has no impact on the outcome. Again, the country conditions noted in the updates to the most recent NDP mostly relate to the potential means of the agents of persecution. They have no impact on the agents of persecution's motivation in this case, which was reasonably found by the RAD not to have been established on the balance of probabilities.

[40] I am therefore satisfied that the updates in the most recent NDP would not have affected the result and therefore, the application for judicial review is dismissed (see *Demir* at para 12).

IV. Conclusion

[41] The RAD carefully assessed the Applicants' evidence and reasonably conducted an assessment on the viability and reasonability of the IFA. On the first prong of the test, the RAD held that there was insufficient evidence that the Applicants would be at risk in Bengaluru. The Applicants did not dispute the RAD's finding on the second prong.

[42] The RAD's decision in relation to the test for IFA is intelligible, transparent and justified (*Vavilov* at paras 15, 98). The RAD properly considered all of the evidence that was before it, and found that Bengaluru was a viable IFA. The application for judicial review is dismissed.

[43] The Parties proposed no question of general importance for certification, and I agree that none arise.

JUDGMENT in IMM-9101-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SULAKHAN SINGH, RAJWINDER SINGH, CHANPREET KAUR, MANDEEP KAUR v MINISTER OF CITIZENSHIP AND IMMIGRATION
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