Federal Court  Cour fédérale

Date: 20231205

Docket: IMM-10622-22

Citation: 2023 FC 1554

Montréal, Quebec, December 5, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

GIAN SINGH
GURBAKSH KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Gian Singh and his wife, Ms. Gurbaksh Kaur, are seeking judicial review of a decision dated September 29, 2022 [Decision], whereby the Refugee Appeal Division [RAD] dismissed their appeal and confirmed the Refugee Protection Division's [RPD] decision denying their refugee claim. Mr. Singh and Ms. Kaur's claim for refugee protection

under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] was rejected because the RAD identified a viable internal flight alternative [IFA] in Mumbai in their country of citizenship, India.

[2] Mr. Singh and Ms. Kaur submit that the RAD erred in its determination of a viable IFA in Mumbai, notably by improperly considering various facts of their claim.

[3] For the reasons that follow, I will dismiss this application for judicial review. In my view, the RAD's Decision was responsive to the evidence, and its findings regarding the IFA location in Mumbai have the qualities that make the RAD's reasoning logical and consistent in relation to the relevant legal and factual constraints. Mr. Singh and his wife simply failed to discharge their onus to convince the RAD that the IFA was not viable.

II. Background

A. *The factual context*

[4] Mr. Singh and Ms. Kaur's refugee claim was principally based on their fear of persecution at the hands of the police in India, particularly the police in their home state of Punjab, as Mr. Singh alleged he had been accused of being a Sikh militant.

[5] Through the course of their volunteer work at their temple or "gurdwara" — as Sikh places of worship are known —, Mr. Singh and his wife befriended an individual named Surinder Singh [S.S.], who was part of a religious singing group called Ragi Jatha.

[6] At one point, the Punjab police raided the Mr. Singh's temple in search of S.S. When they could not find S.S., the police instead arrested Mr. Singh and other friends of S.S., accusing them of being associated with Sikh militants. Mr. Singh was also arrested a second time, for the same reason. Whilst under arrest, he was physically assaulted and tortured by the Punjab police. In both instances, Mr. Singh was released after a few days, after paying a bribe.

[7] Mr. Singh and Ms. Kaur's refugee claim was also based on their fear of persecution at the hands of S.S. himself, as S.S. threatened to harm them if they appeared as witnesses against his friends who were arrested at the temple.

[8] The RPD rejected Mr. Singh and his wife's claim as it found that several viable IFAs existed for them in India.

B. ***The RAD Decision***

[9] Mr. Singh and Ms. Kaur appealed the RPD's decision to the RAD, arguing that the RPD erred in its IFA analysis. No new evidence was submitted on appeal.

[10] Before the RAD, Mr. Singh and his wife alleged that the RPD erred in finding that the Punjab police would not be motivated to find them elsewhere in India. They likewise submitted that the RPD erroneously concluded that the Punjab police did not have the means to locate them as they would be listed in India's Crime and Criminal Tracking Network and Systems database [CCTNS], and tenant verification occurs in the proposed IFA. Furthermore, Mr. Singh and Ms. Kaur claimed that their cellphones and emails would be monitored and that their agents of persecution would also be able to locate them through their family living in India.

[11] The RAD conducted its own IFA analysis and dismissed the appeal. The RAD determined that the RPD was correct in finding that Mr. Singh and his wife are neither Convention refugees nor persons in need of protection, and that a viable IFA exists for them in Mumbai.

[12] First, the RAD determined that the RPD was correct in concluding that the Punjab police lacked the motivation to find Mr. Singh and his wife in Mumbai. Given that there were no formal charges laid or reports issued in relation to Mr. Singh's arrests, and that he was released only five days after his detention by paying a bribe, the RAD determined that it was reasonable for the RPD to conclude that the arrest was "extra-judicial" and made in relation to police corruption, and not because Mr. Singh was actually perceived to be a Sikh militant. The RAD reinforced this point by concluding that the Punjab police's primary targets were S.S. and Ragi Jatha, not Mr. Singh nor his wife, and that neither of them had done anything that would cause the police to lay charges against them since the raid at their gurdwara occurred. Despite the fact that the Punjab police have asked about the whereabouts of Mr. Singh and his wife in their hometown — and are perhaps interested in monitoring them in Punjab —, the RAD was not persuaded that this automatically translates into a motivation to search for them nationwide, given the police's limited resources.

[13] Second, the RAD concluded that the RPD did not err in determining that Mr. Singh was not listed in the CCTNS. Given the circumstances of Mr. Singh's arrests and detention, and the absence of any forms or documents relating to these events, the RAD found it unlikely that the arrests would be officially registered.

[14] Third, the RAD determined that Mr. Singh and his wife have not established, on a balance of probabilities, that they are genuinely perceived as Sikh militants or high-profile individuals such that they would be included in the CCTNS or be pursued across state lines in India. Furthermore, the RAD noted that in Mumbai, due to understaffing, the police do not have the resources to follow up with police forces in other states or to check all new tenants in the tenant verification system.

[15] Fourth, the RAD found no serious possibility that Mr. Singh and Ms. Kaur could be located because of their cellphones and email accounts. In this respect, the RAD determined that India's central monitoring system, which holds all data intercepted by telecom service providers, has not been implemented in the Maharashtra state (where Mumbai is located) and that, even if it were, the Punjab police would not be among the agencies authorized to access its information.

[16] Finally, the RAD observed that Mr. Singh and his wife would not be required to hide their location from their extended family. The RAD concluded that there was no evidence suggesting that their relatives were subject to repeated visits by the Punjab police since Mr. Singh and Ms. Kaur moved to Canada. Indeed, noted the RAD, only one police visit had occurred in the last five years. As such, the RAD concluded that their extended family living in India would not face pressure from the police to reveal the whereabouts of Mr. Singh and his wife.

[17] In sum, the RAD found no evidence that the Punjab police nor S.S. would search for Mr. Singh and Ms. Kaur in Mumbai. Given the circumstances of the case, the RAD was also satisfied

that it would not be unreasonable for them to relocate to the IFA location. As such, the RAD concluded that the two prongs of the IFA test have been met.

C. *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 (*Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557 at para 16; *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 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

[22] Mr. Singh and Ms. Kaur allege that the RAD erred in its IFA determination by omitting to consider certain factors in its analysis. First, they claim that the absence of official charges against Mr. Singh is not proof that the Punjab police lacks interest in them. Second, they submit that the fact the police took Mr. Singh's fingerprints demonstrates an interest by the police in keeping track of them. Third, they maintain that, even if no other police department in India is involved, this does not mitigate the Punjab police's interest in locating them. Fourth, they

contend that it was unreasonable for the RAD to conclude they are not in the CCTNS given that Mr. Singh's fingerprints were taken during his detention. Fifth, they say that the RAD erred by conflating extra-judicial arrests with arbitrary ones. Finally, they argue that the RAD did not properly consider the National Documentation Package for India [NDP] in its analysis of their risk of being found by the Punjab police via the CCTNS, the tenant verification system, or their electronic and phone communications.

[23] I am not convinced by the submissions put forward by Mr. Singh and his wife.

[24] As pointed out by the respondent, the Minister of Citizenship and Immigration [Minister], the RAD correctly applied the two-prong IFA test and reasonably concluded that Mr. Singh and Ms. Kaur have a viable IFA in Mumbai. In my view, Mr. Singh and Ms. Kaur have not established that their agents of persecution have the motivation or means to find them in Mumbai, or that it would be unreasonable for them to relocate there.

A. ***The applicable test on IFA determinations***

[25] 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.

[26] 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).

[27] 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).

[28] As acknowledged by their counsel at the hearing before the Court, Mr. Singh and Ms. Kaur do not contest the RAD's analysis concerning the second prong of the IFA test. I am satisfied that the RPD and the RAD properly concluded that it would not be unreasonable for them to relocate to Mumbai. Therefore, the only issue before the Court is whether the RAD's conclusions on the first prong of the IFA test are reasonable.

B. ***There is no serious possibility of persecution or risk in the IFA location***

[29] In the Decision, the RAD advanced multiple reasons for its conclusion that neither the Punjab police nor S.S. would be motivated to locate Mr. Singh and his wife outside their home state of Punjab. Indeed, the RAD conducted a detailed analysis of bribery and corruption that is endemic in Indian police forces and concluded that the Punjab police's motivation for arresting Mr. Singh was nothing more than to extort bribes from him. Furthermore, the RAD assessed the particular circumstances surrounding Mr. Singh's arrest and concluded that he was not the target of the police investigation but was simply detained for being "guilty by association." The fact that no formal charges were laid was one of many elements that led the RAD to determine that the Punjab police would not be motivated to locate Mr. Singh and his wife elsewhere in India.

[30] Mr. Singh and Ms. Kaur contend that taking Mr. Singh's fingerprints demonstrates an interest by the police in keeping track of him, and that Mr. Singh's name will therefore appear in the CCTNS. With respect, I do not agree. The RAD's decision addressed these points in detail. From paragraphs 23 to 27 of the Decision, the RAD assessed the nature of Mr. Singh's arrest and the fingerprinting that took place. The RAD properly dealt with the evidence before it and concluded that it was unlikely that Mr. Singh would appear in the CCTNS or that his fingerprints were formally recorded. I acknowledge that the RAD appears to have mistakenly stated that Mr. Singh's fingerprints were taken "on paper." However, this does not change the fact that, according to the evidence, the arrest procedure followed in the case of Mr. Singh was very informal and did not lead to any official sanction or measure against Mr. Singh.

[31] Furthermore, the RAD did not fail to address the documentary evidence with respect to fingerprinting and the CCTNS. In fact, the RAD ultimately used this evidence to conclude that fingerprints are only entered into the CCTNS for individuals who are formally processed by the police, which the RAD determined was not the case here. As the Minister noted in his submissions, the RAD and the RPD deserve an important degree of judicial deference regarding their factual conclusions, and Mr. Singh and his wife have not demonstrated any reviewable error by the RAD on this front (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 46, 59–60).

[32] Regarding the involvement of other police departments, I agree with the Minister that it was reasonable for the RAD to evaluate the capacity of other police departments across India to access information regarding the whereabouts of Mr. Singh and Ms. Kaur, since the determinative question is to assess whether there would be a risk to locate them in an IFA. The RAD's conclusions to this effect are well reasoned and considered the documentary evidence.

[33] Additionally, the RAD noted the lack of instances where the Punjab police contacted Mr. Singh's family members still living in India to try to locate him and his wife. In the past five years since Mr. Singh and his wife have been in Canada, the Punjab police only contacted their family in India once. The RAD also observed that Mr. Singh gave no evidence as to how the local police in the state of Punjab would manage to know that he and his wife would have returned to India.

[34] Mr. Singh and Ms. Kaur argue that it was unreasonable for the RAD to conclude that the Punjab police did not have the motivation to pursue Mr. Singh, in light of the fact that the RAD

had otherwise found his arrests, detention, and torture by the Punjab police to be credible. They further claim that the RAD ignored evidence in the NDP which, according to them, specifically contradicted its findings on the tenant verification system and the CCTNS. In addition, they state that the RAD failed to refer to the evidence provided by neighbours and the sarpanch, who swore affidavits alluding to the continued interest of the Punjab police in locating Mr. Singh and his wife.

[35] I am not persuaded by these arguments. An administrative decision-maker's failure to mention evidence does not necessarily make a decision unreasonable (*Valencia* at para 25; *Khir v Canada (Citizenship and Immigration)*, 2021 FC 160 [*Khir*] at para 48; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 24). It is a well-settled principle that administrative decision makers are presumed to have weighed and considered all the evidence before them unless proven otherwise (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1). In the same vein, a failure to mention a particular piece of evidence does not mean that it was ignored (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[36] It is true that, when an administrative decision maker does not properly deal with evidence squarely contradicting its findings of fact, the Court may intervene and infer that the decision maker overlooked the contradictory evidence when reaching its conclusion (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) at para 17). However, the failure to consider specific evidence must be viewed in context, and it is only

when the evidence is critical and squarely contradicts the decision maker's conclusion that the reviewing court may determine that the tribunal disregarded the material before it (*Khir* at para 48; *Torrance v Canada (Attorney General)*, 2020 FC 634 at para 58). I have not been convinced that this is the case here.

[37] Considering all of the evidence before it, I find that it was reasonable for the RAD to conclude that the Punjab police would not be motivated to find Mr. Singh and his wife elsewhere in India. Furthermore, as has been noted by this Court, "there is a difference between a persecutor's *ability* to pursue an individual throughout a country and his *desire* to do so or *interest* in doing so. The fact that a persecutor is able to pursue an individual is not decisive evidence that he is motivated to do so. If the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution" [emphasis in original] (*Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 13). Here, there was little or no evidence to demonstrate that the Punjab police would have any motivation to find Mr. Singh and Ms. Kaur in Mumbai, let alone that the police would have the capacity to do so. All the evidence instead reflected the highly localized nature of the threats against Mr. Singh and his wife, which were essentially limited to the village they were coming from in Punjab.

[38] A party challenging an administrative decision must satisfy the reviewing court that "any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Here, Mr. Singh and Ms. Kaur have not persuaded me that there is such a shortcoming. In this case, I am instead satisfied that the RAD's reasoning can be followed without a decisive flaw in rationality or logic and that the reasons were developed in

such a way that the analysis could reasonably lead the RAD, having regard to the evidence and the relevant legal and factual constraints, to conclude as it did (*Vavilov* at para 102). There is no serious deficiency in the Decision that would taint the analysis and that would be likely to undermine the requirements of justification, intelligibility, and transparency.

[39] Following *Mason* and *Vavilov*, the reasons given by administrative decision makers have taken on a greater importance and are now the starting point for the analysis on an application for judicial review. They are the primary mechanism by which administrative decision makers show that their decisions are reasonable, both to the affected parties and to the reviewing courts (*Vavilov* at para 81). They serve to state "how and why a decision was made," demonstrate that "the decision was made in a fair and lawful manner," and shield against "the perception of arbitrariness in the exercise of public power" (*Vavilov* at para 79). In short, it is the reasons that establish the justification for the decision, and the reviewing courts must read them "holistically and contextually" in "light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at paras 97, 103; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 at para 15).

[40] In this case, I am of the view that the RAD's reasons provide a transparent and intelligible justification for the Decision (*Vavilov* at paras 81, 136). At paragraph 102 of *Vavilov*, the Supreme Court held that the reviewing court "must be satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived'." In this matter, it is easy to trace and to follow the RAD's line of analysis of the situation faced by Mr. Singh and his wife, and the Decision bears

the hallmarks of reasonableness, which are justification, transparency, and intelligibility (*Vavilov* at para 99).

[41] The RAD's conclusions on the existence of an IFA are essentially factual and go to the very heart of its expertise in matters of immigration and refugee protection. It is well established that the RAD takes advantage of the specialized knowledge of its members to assess evidence relating to facts that fall within its area of expertise. In such situations, the standard of reasonableness requires the Court to show great deference to the RAD's findings (*Mason* at paras 57, 73). It bears reminding that it is not the task of a reviewing court to reweigh the evidence on the record, or to reassess the decision maker's findings of fact and substitute its own (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). Rather, the Court must consider the reasons as a whole, together with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53), and limit itself to determining whether the conclusions are irrational or arbitrary.

[42] In sum, the Decision is based on an internally coherent reasoning that is both rational and logical. The RAD provided multiple conclusions supporting its determination that the Punjab police would not be motivated to locate Mr. Singh and Ms. Kaur in Mumbai nor have the resources to do so such that the first prong of the IFA test is satisfied. Consequently, the Decision was responsive to the evidence, and its findings regarding the IFA location in Mumbai are defensible based on the facts and the law.

IV. Conclusion

[43] 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 to the existence of a viable IFA in Mumbai for Mr. Singh and his wife. There are no grounds for the Court to intervene.

[44] There are no questions of general importance to be certified.

JUDGMENT in IMM-10622-22

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

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