Federal Court  Cour fédérale

Date: 20231228

Docket: IMM-10552-22

Citation: 2023 FC 1758

Ottawa, Ontario, December 28, 2023

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

JASWANT SINGH & RUPINDER KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Jaswant Singh [Principal Applicant] and his wife, Rupinder Kaur [Associate Applicant], who are both Indian citizens, seek judicial review of a September 29, 2022 decision of the Refugee Appeal Division [RAD] confirming the refusal of their refugee claim by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada. The RPD and RAD found the Applicants had a viable internal flight alternative [IFA] in

Delhi and found that the Applicants had not met their burden of proof to demonstrate, on a balance of probabilities, that there is a serious possibility they would be persecuted or face a risk of harm in Delhi or that it would be objectively unreasonable in all the circumstances for them to seek refuge there. Accordingly, the RAD concluded that the Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA].

[2] For the reasons that follow, the application for judicial review is dismissed. The RAD reasonably assessed the Applicants' submissions and evidence against the accepted test for a viable IFA and reasonably found the Applicants had an IFA in Delhi.

II. Factual Background

[3] The Applicants are a married couple, Sikhs, from Haryana, India. They claimed refugee status in this country based upon their allegations that they feared and were at risk from members of the Bhartiya Janta Party [BJP], the Rashtriya Swayamsevak Sangh [RSS], and the Haryana police because the Principal Applicant was a member of the Indian National Lokdal [INLD] who dared "go against Hindu community interest in the national". The Principal Applicant was accused by the state police of supporting an interstate gang and abetting criminals. With the help of a lawyer, the Principal Applicant met with the local Deputy Commissioner seeking his intervention against police abuse. The Principal Applicant was later interrogated by Haryana and Uttar Pradesh state police on the allegation that he was involved in narcoterrorism and abetting criminals who allegedly threatened to kill him. The Associate Applicant was also arrested, pressured to make a confession, sexually assaulted and accused of being anti-national. After

payment of a bribe, the Applicants were released from police custody and they both received medical treatment.

[4] On July 24, 2019, the Applicants left India for Canada, and on August 24, 2019, the Applicants filed their refugee claim.

III. RPD & RAD Decisions

[5] The RPD had several issues with the evidence, and lack thereof, submitted in support of the Applicants' claim. The only issue of credibility with the evidence that the RAD commented on was, at the RPD hearing, the Applicants claimed that the police in their Indian home state had been looking for them regularly every 4-5 months, but this detail was not mentioned in their BOC. The RPD doubted the veracity of this statement because it goes to the core of the Applicants' continued fear of persecution, and such an important detail would have been included in their BOC. The RPD dismissed the Applicants' claim for refugee protection after it found the Applicants had a viable IFA in Delhi. Their appeal to the RAD was not successful.

[6] To the RAD, the Applicants made two principal submissions of which only the second is relevant in this Application: the Applicants asserted that the RPD erred in finding that they have an IFA in Delhi.

[7] In this Application for judicial review, the Applicants' arguments refer repeatedly to the RPD decision when it is the RAD's decision that is the subject of the judicial review. The Court will assume that the Applicants meant to refer to the RAD in their submissions. As such, on this

Application, the Applicants assert that the RAD erred in rejecting their submissions on the IFA in Delhi and base their assertion on two arguments. For the reasons that follow, this Application will be dismissed.

IV. Issue

[8] This Application hinges on two key issues:

1. Did the RAD err in making an adverse credibility finding and requiring corroborating evidence?

2. Did the RAD err in concluding that the Applicants have an available IFA in Delhi?

V. Relevant Law

A. *Standard of Review*

[9] The Supreme Court of Canada has established that when conducting a judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23).

[10] The reasonableness standard "requires that a reviewing court defer" to a decision that is based on "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 85 and 99). In assessing

whether a decision is reasonable, the Court will assess whether the decision is appropriately justified, transparent and intelligible.

[11] If there is no breach to the procedural fairness duty, the Court will apply *Vavilov*'s presumption to use the reasonableness standard of review. In that case, a court applying the reasonableness standard does not ask what decision it would have made in place of the administrative decision maker. It is "an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers" (*Vavilov* at para 13).

[12] The decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. "The reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125).

B. *Credibility*

[13] As far as the RPD's assessment of the Applicants' credibility and the evidence is concerned, case law has already determined that the reasonableness standard applies (see *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 13 [*Lawan*i]; see also *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 at 24 [*Huang*]).

[14] Concerning credibility and plausibility questions, a reviewing court can neither substitute its own view of preferable outcome, nor can it reweigh the evidence and the court must not intervene with the RPD's or the RAD's decision, so long as the panel came to a conclusion that is transparent, justifiable, intelligible and within the range of possible acceptable outcomes that are defensible in respect of the facts and the law (see *Lawani* at para 16).

[15] To begin an analysis, the default presumption should be that a refugee claimant's testimony is truthful unless there is a reason to doubt it (see for example, *Akinola v Canada (Citizenship and Immigration)*, 2019 FC 1308 at para 39). This presumption is rebuttable when an omission in the original recounting (such as in a BOC) or subsequent testimony of an event, or an inconsistency between them, gives sufficient reason to require some corroborating evidence as long as the decision-maker is able to articulate why they are suspicious of the claim (see *Maldonado v Canada (Minister of Employment and Immigration)*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (FCA)).

[16] Generally, a claim cannot be rejected on the basis of a lack of corroborative evidence if the applicant's credibility is not in question (*Dayebga v Canada (Citizenship and Immigration)*, 2013 FC 842 [*Dayebga*] at para 26, citing *Ahortor v Canada (Minister of Employment and Immigration)*, (1993), 65 FTR 137 (Fed TD) at para 45). However, if the decision-maker has raised a credibility concern and the facts suggest it is appropriate, corroborative evidence can reasonably be expected to be available to the applicants, and a failure to produce such evidence makes drawing a negative inference reasonable (*Dayebga* at para 30, citing *Mendez Lopera v Canada (Minister of Citizenship and Immigration)*, 2011 FC 653 [*Lopera*] at para 31).

C. *Viable Internal Flight Alternative*

[17] A Convention refugee and a person in need of protection must be found to face the identified risk in every part of their country of origin. A viable IFA, if found to have met both prongs of the IFA test, will negate a claim for refugee protection under either section 96 or 97, regardless of the merits of other aspects of the claim (*Olusola v Canada (MCI)*, 2020 FC 799 at para 7 [*Olusola*]).

[18] The test for finding a viable IFA was set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (CA) [*Rasaratnam*], and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 at 597 (CA) [*Thirunavukkarasu*]. This test requires a claimant to satisfy the Board of a well-founded fear of persecution in their part of the country, and, in finding the IFA, the Board must be satisfied, on a balance of probabilities, of two things:

a. There is no serious possibility of the claimant being persecuted or subject to a section 97 danger or risk in the part of the country to which it finds an IFA exists; and

b. Conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances including circumstances particular to him, for the claimant to seek refuge there.
Rasaratnam at 711; *Thirunavukkarasu* at 592.

[19] When discussing an IFA, it is important to consider that an IFA is "inherent in the definition of a Convention refugee" (*Rasaratnam* at 710). This is because an IFA is not a legal defence or doctrine, it is merely a "short-hand way of describing a fact situation in which a person may be in danger of persecution in one part of a country but not in another" (*Thirunavukkarasu* at 592). An IFA can only exist if the claimants have established a serious possibility of persecution under a Convention ground (see *IRPA* section 96) or if removal to their country exposes an applicant to a risk of torture or other enumerated risk, and that such risk exists throughout the country (see *IRPA* section 97(1)(b)(ii)). If no serious possibility of persecution or the aforementioned risk exists throughout the country, there is no reason to advance to an IFA analysis.

[20] A serious possibility of persecution can only be found if it is demonstrated that the agents of persecution have the probable means and motivation to search for an applicant in the suggested IFA (*Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46 [*Saliu*], citing *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 43).

[21] In addition, the tribunal must also be satisfied that, in all the circumstances, including the Applicant's particular circumstances, the conditions in the proposed IFA are such that it is not unreasonable for the Applicant to seek refuge there (see *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) [*Ranganathan*] at para 15). The threshold to establish unreasonableness is very high, requiring "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area" (*Ranganathan* at para 15).

[22] The applicant bears the onus of refuting the reasonability of the IFA, taking into account their particular situation and the country involved (*Thirunavukkarasu* at 597).

VI. Analysis

A. *Credibility*

[23] The Applicants submit the RAD erred in its credibility assessment of the Applicants' evidence and testimony about the continued motivation and interest of the police and BJP to locate the Applicants. The Applicants argued that, despite acknowledging the Applicants to be credible, the RAD doubts the Principal Applicant's testimony that the Haryana police had been contacting his parents every 3-4 months to look for him because there was no mention of these visits in his BOC narrative, and thus undermines threats to him.

[24] On the alleged error on the credibility assessment about the motivation and interest of the police and BJP to locate the Applicants, the RAD considered the Principal Applicant's explanation that he had mistakenly omitted this from his BOC and the RPD's finding that the explanation was unreasonable as the Applicants' main agent of persecution was the police and they allegedly fled India because of them. The RAD considered the RPD's finding that the police allegedly contacting his parents to look for him was a significant event that would not be overlooked or forgotten and constituted a significant omission from the BOC that seriously undermined the Principal Applicant' credibility. The RAD also considered the RPD's finding that if the police were indeed motivated to find the Applicants that they would have visited their children and maternal grandparents in Punjab to inquire about the whereabouts of the Applicants.

[25] In light of the Principal Applicant's omission from their BOC, and without questioning the overall credibility of the Applicants, it is open for the RAD to look for corroborating evidence that could support the Applicants' allegation of continued inquiries to their parents by the police despite their BOC omission (see *Dayegba* at para 30, citing *Lopera* at para 31). There were letters and affidavits submitted, including an affidavit from the Principal Applicant's father. His father's affidavit makes no mention of the police contacting him, only including a vague statement that the police "are still searching for them." If even the affidavit from his parent, whom the Principal Applicant alleges the police regularly contact because they are looking for him, does not mention any contact from the police, it was reasonable for the RAD to make a negative inference on this allegation in the absence of any corroborating evidence.

[26] The Applicants also argue the RAD made a negative inference regarding the police's capacity to track them because they are only a layperson and do not have a fulsome understanding of the technology and methods available to the police. On reading the Decision, it must be clarified that the RAD did not make such an adverse inference. The RAD did not expect the Applicants to have any technical knowledge of how the police could track them, but since the Applicants themselves raised the point that the police could persecute them by tracking them through the Crime and Criminal Tracking Network System [CCTNS], Aadhaar card system, or the tenant verification system, the onus is on them to satisfy the RAD that these concerns are supported by objective evidence. The Applicants did not offer any objective evidence supporting the police's ability, let alone motivation, to employ any of these technologies to track them down, and the RAD simply found the Applicants had not met their onus. This is not a credibility finding, it is merely a failure on the evidence proffered by the Applicants.

B. *Viable Internal Flight Alternative*

(1) The first prong of the IFA test

[27] The Applicants submit that the RAD erred in the first prong of the *Rasaratnam* IFA test in its assessment of the reach and capacity of the police and the BJP in Delhi. The Applicants argue that there is serious possibility of persecution in the IFA as Delhi is in the same state of Haryana as, and only 200 km away from, their hometown and the Delhi police is under the same federal government of India where BJP is the ruling party.

[28] On the alleged error of assessment of the reach and capacity of the police and the BJP in Delhi, the RAD considered the objective evidence contained in the 2021 National Documentation Package [NDP] for India, which contains exhaustive information about how police in India operate, how the CCTNS works, what the Aadhaar card system is, and how the tenant verification process works. After reviewing the NDP, the RAD found the evidence insufficient to establish the Applicants' allegations.

[29] Firstly, the Applicants allege that there is no guarantee that similar incidents to their past experience will not happen again in Delhi. The NDP clearly indicates the police make extrajudicial arrests under the guise of association with militants or terrorism without going any further because there is no evidence. However, these appear to be random, and frequently go unrecorded in police databases.

[30] Secondly, and following from the first point, there is no evidence that the Applicants have been charged, or have any outstanding warrants, such that they would be recorded in the CCTNS. The CCTNS system is used to track people of interest for particularly dangerous or heinous crimes. There is no evidence the Applicants meet this profile. Further, the police have no evidence against the Applicants, and they have never been charged. Notably, the Applicants have no evidence that they are in a police diary, or that they are even persons of interests. There is no evidence that the police have any recorded entries about the Applicants.

[31] Thirdly, there is no evidence, nor is there any credible argument, for how the police could use the Aadhaar card system generally, or through the tenant verification process which uses it, to track the Applicants. The NDP indicates that police are prohibited by law from accessing or using biometric data from the Aadhaar card system for criminal investigations. The agency that runs the CCTNS (the National Criminal Records Bureau) has been judicially excluded from access to Aadhaar Data, and the Aadhaar card system's governing statute, the *Aadhaar Act*, prevents the agency running it (the Unique Identification Authority of India) from sharing this data for criminal investigations. In their submissions, the Applicants state this allegation is based on the experience of the Principal Applicant and his family, but such pointed accusations are not mentioned in any affidavit or supporting evidence submitted by the Applicants. In the face of both practical and legal restrictions directly to the contrary, the Applicants have offered only conspiracies to support their allegation that the police could ever use this system to track them.

[32] Fourthly and finally, the Applicants allege the police in Delhi are a mere puppet of the ruling party and will do whatever they are told. Further, they submit that since the Delhi police

are under the same federal government as the police department they fear in their hometown, the Delhi police are a proxy for them and will also do the bidding of their hometown police department. They have offered no evidence of these accusations, instead making broad and unsupported statements that these are "very likely" to be true. Unfortunately, accusing a foreign nation's government of using their regional police forces for political purposes specifically to hunt them down requires more than the Applicants' "say-so".

[33] As said by the RAD, Delhi is a major city in India. There is no evidence that the Applicants might suffer persecution in that city. The onus was on the Applicants, and bald statements without supporting evidence or case law cannot, and does not, justify an intervention from this Court. Otherwise, it would be a disguised correctness analysis (*Vavilov* at para 83).

[34] I do not see any shortcomings from the RAD's decision on the first prong. In my view, it was reasonably open to the RAD to reach this conclusion for the reasons that it gave.

(2) The second prong of the IFA test

[35] For the purposes of both sections 96 and 97 of the IRPA, the second prong of the IFA test requires the Applicants to demonstrate that it would not be objectively reasonable for them to be required to seek refuge in the IFA area, having regard to all the circumstances, including the Applicants' particular circumstances (*Thirunavukkarasu* at 597*). In this regard, the threshold of objective unreasonableness is* "very high" *and* "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to" *the area where a potential IFA has been identified (Ranganathan* at para 15*). Such*

conditions must be established based on actual and concrete evidence. Conversely, it is not sufficient "for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear or persecution, then IFA exists and the claimant is not a refugee" *(Thirunavukkarasu* at 598*).*

[36] The Applicants submit that the RAD erred in assessing the second prong of the IFA test because it unreasonably requires the Applicants to live in hiding and isolation in Delhi and did not reasonably consider their personal circumstances. The Applicants would have to live in hiding in Delhi and, since the Applicants are not educated and cannot work from their home, they would have to go out of their home to find work, which they claim would put them at risk. The Applicants are Sikhs in a predominantly Hindu city, and they cannot speak the language spoken by the majority there. Finally, the Applicants submit that the RAD failed to consider other relevant factors like education, language, employment, housing, medical and mental health care, and indigeneship.

[37] Contrary to the Applicants' position, the RAD's assessment of these issues was not unreasonable. In brief, given the RAD's earlier negative credibility findings, the Applicants would have no reason to "live in hiding and isolation" or otherwise be prevented from leaving their house. Further, considering this was the argument raised by the Applicants, they bear the onus of establishing that this would have been the outcome of the IFA and how it would be unreasonable. The Applicants offered no evidence in support of this allegation, pointing only to their concerns that the police, as a proxy of the ruling party, would use their myriad tracking

systems to hunt down the Applicants in Delhi. As discussed above, these allegations are not credible, and do not support the Applicants' supposition that they will be forced to hide and never leave their home.

[38] After reading the RAD's decision, this Court does not find that the RAD implicitly required that the Applicants hide themselves. The RAD focused its attention on the low probability risk of persecution in Delhi by saying that the Applicants did not discharge their onus to demonstrate that if they go to Delhi, it would be unduly harsh in their particular circumstances or that their life or safety would be endangered. The RAD did consider the other personal hardships summarized immediately above (e.g. the Applicants spoke Punjabi, believed to be spoken by approximately 35-40% of the population in Delhi, the Applicants' Sikh religion practiced by 4.43% in Delhi, and their ability to find housing and other services in Delhi). However, it reasonably concluded that it did not rise to the level of constituting objectively unreasonable conditions, as described in the jurisprudence (see paragraph 17-22 above). In the absence of any concrete evidence of such unreasonable conditions, it was open for the RAD to conclude that the Applicants had not met their burden with respect to the second prong of the IFA test.

[39] For all the above reasons, this Court finds that the RAD's decision "is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law" (*Vavilov* at para 85), and therefore the decision is reasonable.

VII. Conclusion

[40] In my view, the RAD's analysis of the objective evidence was reasonable. After correctly stating the test applicable to the two prongs of the IFA analysis, the RAD observed that the Applicants' fears did not provide a sufficient basis upon which to conclude that the police would be motivated to pursue the Applicants in Delhi. The Applicants had failed to establish with sufficient, credible evidence that they were serious criminals who the police would have the motivation to track to Delhi. Despite the absence of any objective evidence of such motivation, the RAD considered the objective evidence about the technologies the Applicants alleged the police could use to track them down, and reasonably found the Applicants had not met their burden to demonstrate that they face a serious possibility of persecution or risk contemplated by s. 97 in Delhi. The Applicants have further failed to demonstrate that the IFA is unreasonable.

[41] For the reasons set forth above, this Application is dismissed.

[42] No serious question of general importance for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-10552-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Ekaterina Tsimberis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10552-22
STYLE OF CAUSE:	JASWANT SINGH & RUPINDER KAUR v MINISTER OF CITIZENSHIP & IMMIGRATION CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 23, 2023
JUDGMENT AND REASONS:	TSIMBERIS J.
DATED:	DECEMBER 28, 2023

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