

Federal Court



Cour fédérale

**Date: 20240208**

**Docket: IMM-1409-23**

**Citation: 2024 FC 202**

**Toronto, Ontario, February 8, 2024**

**PRESENT: Mr. Justice Gascon**

**BETWEEN:**

**DALJEET SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Mr. Daljeet Singh, is seeking judicial review of a Pre-Removal Risk Assessment [PRRA] decision rendered on December 19, 2022 [Decision] by a senior immigration officer [Officer], pursuant to subsection 112(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In the Decision, the Officer found insufficient evidence to conclude that Mr. Singh would face more than a mere possibility of harm or persecution if he

were removed to India, his country of citizenship. The Decision followed negative decisions of the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD], which had both dismissed Mr. Singh's claim for refugee protection, finding that Mr. Singh was not credible and that he disposed of a viable internal flight alternative [IFA] in Delhi or Mumbai.

[2] Mr. Singh affirms that he has a well-founded fear of persecution as a result of a land dispute with his neighbour in India and because of his status as a gay man—a new allegation of risk made at the time of the PRRA assessment, which neither the RPD nor the RAD contended with. Mr. Singh submits that the PRRA decision is unreasonable because it was made without regard to the evidence or his submissions.

[3] For the following reasons, the application for judicial review will be dismissed. I am satisfied that the Officer assessed Mr. Singh's evidence and allegations, and reasonably concluded that he would not face a risk of persecution, or a risk to life or cruel and unusual treatment or punishment due to his sexual orientation. Mr. Singh has failed to demonstrate any error with the Officer's Decision.

## II. Background

### A. *The factual context*

[4] Mr. Singh originally entered Canada in January 2016 as a student. From 2016 to 2020, he was issued various study permit extensions, a visitor record in 2017, and a work permit in 2020, the most recent of which was valid until May 5, 2022.

[5] In April 2019, Mr. Singh made a claim for refugee protection based on his fear of being harmed by a neighbour in India over a land dispute. He claimed that his neighbour, an armed criminal, attacked and injured him. He alleged that the police in India would not protect him.

[6] In December 2020, the RPD found that Mr. Singh was not a Convention refugee nor a person in need of protection, as he had an IFA in Delhi or Mumbai. Mr. Singh appealed the RPD's decision but, in March 2021, the RAD upheld the RPD's decision.

[7] In October 2021, Mr. Singh failed to appear for an interview with the Canada Border Services Agency. Subsequently, an immigration arrest warrant was issued against him and executed on May 4, 2022. Mr. Singh was then invited to submit an application for a PRRA.

B. *The PRRA application*

[8] In his PRRA application, Mr. Singh attests to being a gay man and being married to a Canadian citizen named Justin Rate. Mr. Singh recognized that he had not mentioned his identity as a gay man when submitting his refugee claim, owing to his "shame and fear of acknowledging his true identity at the time". Because of sexual orientation, Mr. Singh fears ongoing persecution, a danger to his life, liberty and security and societal ostracization and condemnation should he be forced to return to India.

[9] Mr. Singh's PRRA submissions included evidence relating to discrimination against lesbian, gay, bisexual, transgender, and queer plus [LGBTQ+] persons in India. Mr. Singh noted that although homosexuality was decriminalized in India in 2018, gay marriage is not legalized and LGBTQ+ individuals face societal discrimination and violence, particularly in rural areas. Mr. Singh pointed to the National Documentation Package [NDP] for India and other human

rights reports to demonstrate the level of risk and harm faced by LGBTQ+ persons in India. Mr. Singh also submitted his own statutory declaration and letters from family members attesting to the discrimination he is likely to face upon his return.

C. *The PRRA Decision*

[10] On December 19, 2022, Mr. Singh's PRRA application was rejected because the Officer determined that Mr. Singh would not be at risk of persecution, subject to a danger of torture, or face a risk to his life, or a risk of cruel and unusual treatment or punishment if returned to India.

[11] The PRRA Decision provides details as to how this conclusion was reached. The PRRA Officer first noted that the findings made by the RPD and RAD panels still stood with respect to Mr. Singh's alleged fear of being harmed by a neighbour in India over a land dispute, as Mr. Singh has not disproven the previous assessments by submitting new evidence based on a new claim of harm that may be faced upon an eventual return to India. Those previous risk assessments made by the RPD and RAD also raised credibility issues with respect to Mr. Singh's narrative.

[12] In their analysis, the PRRA Officer also considered Mr. Singh's new fear of harsh treatment and ostracization due to his status as a gay man in India, but found that the evidence provided did not demonstrate this alleged fear and that objective corroborating evidence was not provided to support these statements. The PRRA Officer accepted that conditions for LGBTQ+ persons in India have room for improvement, and that there was mistreatment and discrimination. However, the Officer reviewed a recent UK Home Office report on Sexual Orientation and Gender Identity and Expression to conclude that the treatment of LGBTQ+

persons in India is “trending positively”. Moreover, the Officer observed that while there may be some instances of mistreatment of LGBTQ+ persons in India, there is little indication that this treatment is common or that it amounts to persecution.

[13] Ultimately, the Officer determined that Mr. Singh has not demonstrated that his sexual orientation would likely attract negative attention from government officials, police officers, or other persons in India. Consequently, the Officer found that Mr. Singh had not demonstrated that he would face more than a mere possibility of persecution in India based on the Convention grounds, or that he would face, on a balance of probabilities, harms as described in paragraphs 97(1)(a) and 96(1)(b) of the IRPA.

D. *The standard of review*

[14] It is well accepted that the standard of review applicable to the assessments made by PRRA officers is reasonableness (*Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 36; *Bah v Canada (Citizenship and Immigration)*, 2023 FC 570 at para 11; *Rinchen v Canada (Citizenship and Immigration)*, 2022 FC 437 at para 15; *Ashkir v Canada (Citizenship and Immigration)*, 2020 FC 861 at paras 10–12; *Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 at paras 19–20; *Benko v Canada (Citizenship and Immigration)*, 2017 FC 1032 at para 15; *Fares v Canada (Citizenship and Immigration)*, 2017 FC 797 at para 19). 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 at para 7 [Mason]).

[15] 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).

[16] 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).

[17] 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

[18] Mr. Singh submits that he has demonstrated a serious possibility of persecution under section 96 grounds if he returns to India, and that the PRRA Decision fails to consider the new evidence regarding his sexual orientation that was not before the RPD or the RAD. He further claims that the Officer overly relied on the RPD's and RAD's findings that no longer represented an entirely accurate and fulsome view of his forward-facing risk, given the new evidence and circumstances. Along the same vein, Mr. Singh argues that the PRRA Officer was under an obligation to do their own research and failed to consider relevant information related to his fear of persecution. In particular, Mr. Singh points to a number of reports and sources—including a report by the Independent Advisory Group on Country Information, a handbook from the United Nations High Commissioner for Refugees, a document published by the Research Directorate of the Immigration and Refugee Board of Canada, and a report from the International Commission of Jurists—that, in his view, demonstrate persecution against LGBTQ+ persons in India. To this effect, Mr. Singh further argues that the PRRA Officer should have convened an oral hearing to properly assess this newly alleged ground of persecution.

[19] Finally, Mr. Singh notes his religious identity as a Jatt Sikh and highlights documents in the NDP suggesting that any IFA would be unattainable given the discrimination and targeting of Sikhs throughout India.

[20] The respondent, the Minister of Citizenship and Immigration [Minister], submits that a PRRA is not a second chance at a refugee claim, and that Mr. Singh has failed to demonstrate that the Officer's Decision is unreasonable. The Minister further argues that the PRRA Officer did review the evidence on the record, including the declarations from Mr. Singh and his cousin,

as well as the NDP. Moreover, the Minister notes that the PRRA Officer was not required to convene an oral hearing, as this case falls squarely within the framework of established jurisprudence that allows officers to weigh the evidence before them without a requirement to convene an oral hearing. Finally, the Minister maintains that the Officer reasonably concluded that Mr. Singh had not provided corroborating evidence that he would face a personal forward-facing risk, and that if a risk does exist, it is one that is general in nature.

[21] I agree with the Minister's submissions.

A. *The Officer did not ignore evidence*

[22] Mr. Singh submits that there is a serious possibility of persecution under section 96 grounds if he returns to India, and that the PRRA Decision ignored the new evidence regarding his sexual orientation that was not before the RPD or the RAD. With respect, I am not convinced by this argument.

[23] It is clear from the Decision that the Officer was alive to the evidence regarding Mr. Singh's sexual orientation, and did consult the objective documentary evidence before them in arriving at the conclusion that there was no forward-facing risk for Mr. Singh in India related to his sexual orientation. Indeed, after reviewing the evidence, the PRRA Officer found that Mr. Singh had failed to substantiate a personal forward-facing risk, and that he had not provided objective documentary evidence to corroborate the statements made in his and his cousin's statutory declarations. To this effect, the Officer assessed the letter from Mr. Singh's counsel, which states that "there continues to be human rights violations of gay persons", but found that this quote is from a document which was produced before the decriminalization of consensual



same-sex acts in India, on September 6, 2018. The Officer further considered the objective documentary evidence on country conditions for sexual minorities in India, and found that they appeared to be trending positively. Based on their assessment of the NDP, and additional documentary evidence, the Officer concluded that there is less than a mere possibility that Mr. Singh would face persecution under section 96 of the IRPA, and that it was Mr. Singh who failed to provide sufficient evidence that his personal circumstances would result in a forward-facing risk. I find nothing unreasonable in this analysis.

[24] Moreover, it was open to the Officer to conclude that Mr. Singh had not provided corroborating evidence that he would face a personal forward-facing risk, and that in such an instance, if a risk does exist, it is one that is general in nature (*Acosta v Canada (Citizenship and Immigration)*, 2009 FC 213 at paras 14–15; *Prophète v Canada (Citizenship and Immigration)*, 2008 FC 331; *Parchment v Canada (Citizenship and Immigration)*, 2008 FC 1140 at paras 24–28 [*Parchment*]; *Lewis v Canada (Citizenship and Immigration)*, 2007 FC 778 at para 22 [*Lewis*]; *Valderrama v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No. 1125 at para 12).

[25] While Mr. Singh notes various other passages from the objective documentary evidence that he asserts do not wholly align with the conclusions drawn by the Officer, it is not the role of this Court to reweigh the objective documentary evidence (*Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 39 [*Singh 2020*], citing *Kanhasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para 99 [*Kanhasamy*]). Indeed, after assessing the conclusions of the Officer and the documentary evidence they relied on, it was reasonable for the Officer to select and accept parts of the evidence that they considered to be the most persuasive

to support their findings (*Arora v Canada (Citizenship and Immigration)*, 2021 FC 1270 at paras 22–26). As was noted by this Court, “it is well established that an administrative decision maker is presumed to have weighed and considered all of the evidence presented to it, unless the contrary is established” (*Singh 2020* at para 38).

[26] In addition, a failure to mention a particular piece of evidence does not mean that it was ignored or excluded (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). In this case, the Officer did refer to the objective evidence and to Mr. Singh’s testimony, and Mr. Singh is simply expressing his disagreement with the Officer’s assessment of the evidence. It is not the role of a reviewing court to reweigh this evidence (*Kanthasamy* at para 99). 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, the Officer was alive to the evidence highlighting the experience of LGBTQ+ persons in India, and simply weighed the evidence differently from what Mr. Singh would have liked. This is not a reviewable error requiring the intervention of this Court.

[27] As the Minister notes, it is trite law that a PRRA application is not to become a second refugee claim (*Sayed v Canada (Citizenship and Immigration)*, 2010 FC 796 at para 21 [*Sayed*]). In this case, Mr. Singh was found not to be a Convention refugee or a person in need of protection, as the RPD had raised issues with his credibility, and a viable IFA was available to him. Here, the PRRA Officer assessed Mr. Singh’s evidence and allegations of risk, and reasonably concluded that he would not face a risk of persecution, or a risk to life or cruel and

unusual treatment or punishment. Mr. Singh has failed to demonstrate any error with the Officer's Decision.

B. *The Officer was not required to convene an oral hearing*

[28] Mr. Singh further argues that the PRRA Officer should have convened an oral hearing to properly assess his newly alleged ground of persecution. However, such a position is not supported by the jurisprudence of this Court.

[29] There is no duty on the part of officers to hold an oral hearing when sufficiency of evidence is the central issue; moreover, there is no statutory duty to conduct an oral hearing when an officer assesses the weight or probative value of evidence without having to consider its credibility (*Sayed* at para 37; *Cromhout v Canada (Citizenship and Immigration)*, 2009 FC 1174 at para 37; *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paras 26–27; *Parchment* at paras 18–19; *Lewis* at para 22). This is the case here.

C. *Mr. Singh's Sikh identity was not raised to the PRRA Officer*

[30] Mr. Singh also makes a number of submissions regarding risk due to his identity as a Jatt Sikh, and suggests that any IFA would be unattainable given the discrimination and targeting of Sikhs throughout India.

[31] However, this claim was not put before the PRRA Officer. In such cases, the jurisprudence is clear: “the evidentiary record before a Court on judicial review is restricted to the evidentiary record that was before the decision-maker. Evidence that was not before the decision-maker and that goes to the merits of the matter is, with certain limited exceptions, not

admissible” (*Cruz v Canada (Citizenship and Immigration)*, 2020 FC 455 at para 12, citing *Association of Universities and Colleges of Canada v Canadian Copyrights Licensing Agency*, 2012 FCA 22 at para 20; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 19–25; *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 45). Consequently, this Court cannot find the Officer erred in not considering Mr. Singh’s Sikh identity in their analysis, as this potential ground of persecution was not presented to the Officer.

[32] In any event, this Court has noted on numerous occasions that with respect to the second prong of the IFA test, the fact that being Sikh outside of Punjab can represent a challenge is insufficient in itself “to satisfy the stringent second prong of the [IFA] test” (*(Major) Singh v Canada (Citizenship and Immigration)*, 2020 FC 277 at paras 25–26).

#### D. *H&C grounds*

[33] Finally, as the Officer noted in the Decision, some of Mr. Singh’s submissions in the PRRA assessment touch on humanitarian and compassionate [H&C] considerations. However, Mr. Singh had not submitted an H&C application, and it is not the PRRA Officer’s role to conduct H&C assessments. I note in passing that Mr. Singh could still have the ability to make a request to apply for permanent residence on H&C grounds, pursuant to section 25 of the IRPA (*Sidhu v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1681 at para 75).

#### IV. Conclusion

[34] For these reasons, this application for judicial review is dismissed. The Officer assessed Mr. Singh’s evidence and allegations, and reasonably concluded that he would not face a risk of

persecution, or a risk to life or cruel and unusual treatment or punishment. Mr. Singh has failed to demonstrate any error with the Officer's Decision.

[35] None of the parties has raised a question of general importance to be certified, and I agree there is none.

**JUDGMENT in IMM-1409-23**

**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”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1409-23

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