Federal Court Cour fédérale

Date: 20240613

Docket: IMM-4142-23

Citation: 2024 FC 910

Ottawa, Ontario, June 13, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

BALJIT SINGH BASSI
PARMEET KAUR
HARJIT KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants seek judicial review of a Refugee Appeal Division [RAD] decision, dated March 1, 2023 [Decision], confirming the decision of the Refugee Protection Division [RPD] that they are not 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], because they have an internal flight alternative [IFA] in Delhi, Mumbai or Kolkata.

[2] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, I find that 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.

II. Facts

[3] The applicants, Baljit Singh Bassi, Harjit Kaur and Parmeet Kaur [applicants], are citizens of India. They claimed refugee protection in Canada because they fear being harmed because of their support of the Aam Aadmi Party [AAP].

[4] The applicants allege that the principal applicant, Mr. Bassi [principal applicant], supported the Congress Party before he then became, in April 2016, a supporter of the AAP in Punjab. After this change in support, the principal applicant explains having received threats from Congress Party goons and his village Sarpanch. The applicants further allege that in 2017, the principal applicant was detained by the police on false drug charges, that in April 2018 his wheat field was burned, and later that unknown individuals were planning to kill him. The applicants fled to Delhi in April 2018 and, with the help of an agent, came to Canada in August 2018. The second daughter of the adult applicants remained in the village with her grandparents. Lastly, the applicants allege that Congress Party goons and the police have continued to go to their home and inquire about their whereabouts.

[5] On August 31, 2022, the applicants appeared before the RPD. In its September 13, 2022 decision, the RPD concluded that the applicants were not Convention refugees nor persons in need of protection under the IRPA and found that they have a viable IFA in Delhi, Mumbai or Kolkata.

III. Decision under review

[6] In its March 1, 2023 Decision, the RAD dismissed the appeal and confirmed the RPD decision.

[7] The RAD analyzed the merits of the appeal and found that there is no serious possibility of persecution for the applicants in the three suggested IFAs and that it was not unreasonable for them to relocate to the proposed locations. As such, it found that Delhi, Mumbai or Kolkata were viable IFAs for the applicants.

[8] On the first prong of the IFA test, the RAD found that the alleged motivation of the agents of persecution to locate the applicants in the IFAs is speculative. The RAD held that the general assertions, found in the affidavits submitted by the applicants, that the police continued to ask about them after they left their village in India are insufficient to prove that the police has the motivation to find them in the proposed IFAs. The RAD also held that there was no evidence that the principal applicant was wanted for any alleged crime nor was there a warrant for his arrest. Moreover, the applicants did not report having any difficulty during the four months they spent in Delhi before leaving for Canada, and their daughter has remained in their village with no evidence that she has had any issues since the applicants left for Canada.

[9] On the argument that the applicants could be located through the Aadhaar card or the tenant registration system, the RAD noted that the principal applicant was never charged with a crime, that no First Information Report [FIR] was filed against him, that he was able to leave India from an international airport with his own passport, and that he denied any political involvement with separatist groups. Lastly, the RAD stated that the National Documentation Package [NDP] for India in item 10.2 indicates that, with the exception of major crimes, there is minimal interstate police communication and the evidence does not indicate that the applicants were involved in any major crime.

[10] On the means to locate the applicants in the suggested IFAs, the RAD did not find that it was more likely than not that the agents of persecution have the means to locate the principal applicant and subject him to serious harm in the IFAs. The RAD recognized that, as per items 10.13 and 14.8 of the NDP, the Crime and Criminal Tracking Network and Systems [CCTNS] is increasingly used in police stations and a mandatory tenant verification system does exist in India. It noted, however, that the evidence on both of these systems is mixed because the objective evidence indicates that there are not enough resources to follow up on all tenant verification forms, citing the items noted above and item 10.6 of the NDP, and that despite the CCTNS, police systems between districts and states are not integrated. The RAD added that with the exception of major crimes like terrorism, smuggling or high-profile organized crimes, there is little interstate police communication.

[11] The RAD also found that the applicants have not established that the police have the means to locate them through the tenant registration system because tracking through this system

is linked to the CCTNS, and there is no evidence that the principle applicant's information is contained within it. Lastly, the RAD found that the objective evidence, including item 3.16 of the NDP, indicates that the data from Aadhaar cards is tightly controlled, not available in police databases, and there is legislation preventing the sharing of data, with a court order from a higher court being required. The applicants have not established, according to the RAD, how the agents of persecution would have access to this information.

[12] On the second prong of the IFA test, the RAD found that it is reasonable for the applicants to seek refuge in the proposed IFAs of Delhi, Mumbai and Kolkata. It found that the principal applicant would, on a balance of probabilities, find employment in the proposed IFA given his education, work experience and his ability to adapt to new locations. It further noted that the applicants will have a large religious community for support as the objective evidence, including item 12.8 of the NDP, indicates that there are 20 million Sikhs in India and each city is a major urban centre, with Delhi having half a million Sikhs.

IV. Issues and standard of review

[13] The only issue before the Court is whether the RAD's decision confirming that the applicants have a viable IFA in Mumbai, Delhi and Kolkata is reasonable.

[14] The standard of review applicable to the merits of the RAD's Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of

reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a "rubber-stamping" exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. 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 section 96 and section 97 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; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1623 at para 16 [*Singh* 2023 FC 1623]).

[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 their 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 [*Singh* 2023 FC 996]). The applicants must establish that the agents of harm have both elements: the means and the motivation to cause harm (*Ortega v Canada (Citizenship and Immigration),* 2023 FC 652*; Leon at para 13*). 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 under section 96, or to a likelihood of a section 97 danger or risk in the proposed IFA (*Singh* 2023 FC 1623 at para 17).

[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) [*Ranganathan*]; *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at paras 20-21 [*Jean Baptiste*]; *Singh* 2023 FC 1623 at para 18).

A. *The RAD reasonably considered and weighed the objective documentary evidence*

[19] The applicants make three substantive arguments. First, the applicants submit that the RAD failed to properly weigh and consider elements of the objective documentary evidence in the NDP. Second, the applicants submit that the RAD erred by not assessing the possibility of the agents of persecution locating them through their family and friends. Third, they argue that the RAD erred in its analysis of the unreasonable hardships they would face if they relocate to the suggested IFAs.

[20] The applicants submit that the RAD did not properly weigh and take into consideration the objective documentary evidence. The applicants submit that item 14.9 of the NDP states that there is a lack of information sharing between the police and airport officials and as such, their ability to leave India from the international airport with their passports is not evidence of a lack of interest to locate them. The applicants further submit that item 10.13 of the NDP indicates that one of the main tools used in the context of the tenant verification system is the CCTNS database and its scope has been extended to include other information or data from the police. They submit that this proves that an official charge or FIR is not required in order to be located through the tenant verification system. The applicants add that this same item also demonstrates that the agents of persecution have both the means and motivation to find them as it indicates

that the CCTNS includes data from the police and that it is connected in 97% of police stations. The applicants, citing item 3.16 of the NDP, also argue that the Aadhaar card captures demographic and biometric data and that it can be used in a variety of systems spanning from employment and education to inclusion and social security. The applicants also make note of the rampant corruption present throughout India, citing item 2.1 of the NDP, to argue that it is reasonable for them to fear being located using the Aadhaar cards even if it is not legal. In their oral submissions, the applicants' counsel further brought the attention of the Court to evidence found in items 1.5 and 5.2 of the NDP.

[21] In my view, the RAD reasonably considered and weighed the objective documentary evidence. A decision maker is presumed to have considered the entirety of the record before them unless evidence of the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1; *Ayala Alvarez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 703 at para 10; *Herrera Andrade v Canada (Citizenship and Immigration)*, 2012 FC 1490 at para 11 [*Herrera Andrade*]; *Boeyen v Canada (Attorney General)*, 2013 FC 1175 at para 53; *Abdi v Canada (Citizenship and Immigration)*, 2018 FC 47 at para 38; *Leblanc v Canada (Attorney General)*, 2019 FC 959 at para 34; *Senat v Canada (Public Safety and Emergency Protection)*, 2020 FC 353 at para 34; *Kamikawa v Canada (Citizenship and Immigration)*, 2024 FC 873 at para 18). It is on the applicant wishing to prove the contrary that the "high burden of persuasion" falls (*Herrera Andrade*, at para 11).

[22] In this case, the RAD has clearly taken into consideration and cited items 10.13 and 3.16 of the NDP in its Decision. As for the other items of the NDP brought to the attention of the

Court, the two items added during the oral submissions do not demonstrate, as suggested by the applicants, that there is a low percentage of relocation within the country of India nor do they contain more information on how the tenant verification system in the country operates. Moreover, the RAD did in fact examine the objective evidence contained in the NDP relating to the tenant verification system and recognized that a mandatory tenant verification system exists. It reasonably found that the evidence on the efficiency of this system is mixed, as it suggests that there are not enough resources to follow up on all the tenant verification forms.

[23] Furthermore, in relation to the CCTNS, the applicants acknowledged that the NDP indicates that the CCTNS database is one of the main tools used in the context of the tenant verification system. The RAD reasonably relied on the objective evidence in item 10.13 of the NDP which states that, with the exception of major crimes, there is little interstate police communications. It reasonably weighed this evidence with the facts that no FIR was filed in the principal applicant's name, that he was not charged by the police with a crime, and that the CCTNS does not contain information on extra-judicial arrests (*Kumar v Canada (Citizenship and Immigration)*, 2022 FC 1059 at para 17; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1211 at paras 28–31 [*Singh* 2023 FC 1211]; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1715 at para 38; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 64 at paras 20-23 [*Singh* 2023 FC 64]; *Singh Sidhu v Canada (Citizenship and Immigration)*, 2020 FC 191 at paras 26-29; *Sandhu v Canada (Citizenship and Immigration)*, 2024 FC 262 at para 21 [*Sandhu*]).

[24] Lastly, the RAD reasonably noted that the NDP demonstrates that biometric data from the Aadhaar card is not in police databases, that the agency that runs the CCTNS is excluded from access to the Aadhaar card data, and that the police is prohibited by law from accessing Aadhaar card information for criminal investigations (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1758 at para 31; *Singh* 2023 FC 64 at paras 22-23; *Sandhu* at para 22). The applicants have not pointed to any evidence of illegal use of Aadhaar card information to locate individuals to support their allegation.

B. *The RAD reasonably considered the evidence of harassment*

[25] The applicants argue that the RAD failed to assess the possibility for the applicants' agents of persecution to locate them through their family and friends. The applicants submit that they have provided affidavits from friends and family confirming that the police still inquires on their whereabouts, which demonstrates that the agents of persecution are motivated to find them. They add that the fact that the agents of persecution have not targeted their daughter who remains in their village is not evidence of a lack of interest in finding them. Citing *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586 [*Zamora Huerta*], *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*], *AB v Canada (Citizenship and Immigration)*, 2020 FC 915 [*AB*] and *Bhuiyan v Canada*, 2023 FC 410 at para 27 [*Bhuiyan*], the applicants submit that it would be unreasonable to expect them to hide their location from their family and friends.

[26] With respect, these cases are distinguishable. In *Bhuiyan, Zamora Huerta, Ali and AB,* there was evidence that the applicants' relatives would be in danger if they lied to the persecutors

about the applicants' whereabouts. There was also evidence that the persecutors had the capacity and willingness to pursue the applicants in their new locations based on the acquired information (*Singh* 2023 FC 1211 at para 33).

[27] In this case, the fact that the police is willing to locate the applicants within their own village does not demonstrate that they would be motivated and capable to locate them outside of the state of Punjab, which is what the applicants have to demonstrate to meet the IFA test (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1151 at paras 15-16 [*Singh* 2023 FC 1151]; *Singh* 2023 FC 1211 at para 34).

[28] As held by Justice Rochester in *Singh* 2023 FC 1151 at paragraph 17:

> [T]he holdings in these [three cited cases] are fact-specific and cannot be generalized to every IFA situation. They are distinguishable on the basis that in those cases there was sufficient evidence that the agents of persecution had the motivation to locate the claimants. The Punjab police's mere knowledge of the whereabouts of the Applicants, assuming the families would disclose it, does not establish a serious possibility of persecution or risk in the proposed IFA cities if the Punjab police have neither the means nor the motivation to act on it.

[29] Moreover, as held in *Singh* 2023 FC 996 at paragraph 24, the fact that an agent of persecution acquires knowledge of a claimant's whereabouts does not establish a risk if the agent is unable or unwilling to act on it. Indeed, in *Singh* 2023 FC 996, the applicants relied on *Ali* to argue that they would be forced to hide from family and friends. Justice McHaffie, in *Singh* 2023 FC 996 at paragraph 24, held that:

> […] The ultimate assessment in the first prong of the IFA test is whether the claimant would face a serious possibility of persecution on a Convention ground, or a likelihood of a section

> 97 danger in the IFA. The agent of persecution's mere knowledge of the location of the claimant does not alone establish such risk or danger if they are unable or unwilling to act on it. In *Ali*, Justice Russell concluded the evidence showed that the agents of persecution were willing (*i.e.*, motivated) to pursue the applicants beyond their region: *Ali* at paras 44–46. As a result, the knowledge of the applicants' whereabouts resulted in the dangers posed, provided the agents of persecution had the operational capacity to carry out their motivation, an issue Justice Russell also addressed: *Ali* at paras 56–58. In the present case, the RAD found the evidence did not establish the Haryana police had the means or the motivation to pursue Mr. Singh beyond Haryana. Simply stating that they could potentially obtain knowledge of his location through his father is insufficient, even if the applicants had put this argument before the RAD.

[30] Likewise, in this case, even if the police were able to determine the applicants' location by questioning their family and friends, there remains no evidence that the police has the motivation to find them in the proposed IFAs.

C. *The RAD's finding on the second prong of the IFA test is reasonable*

[31] The applicants submit that it is not reasonable to expect them to relocate to one of the IFAs suggested because of their Sikh identity. They state, citing item 12.8 of the NDP, that Sikhs face communal violence, that prejudice against them is deeply rooted, that society outside of Punjab is more hostile towards them and that they face varying degrees of socio-economic, legal and cultural discrimination.

[32] The RAD's finding on the second prong of the test is reasonable. It concluded that it is reasonable for the applicants to seek refuge in the proposed IFAs of Delhi, Mumbai and Kolkata. Indeed, the RAD took into consideration and cited item 12.8 of the NDP in its Decision as it

noted that the applicants will have a large religious community for support. Item 12.8 further states that Sikhs generally do not face systematic problems in India based on their identity and that they are one of the multiple religious minorities that face varying degrees of socio-economic, legal and cultural discrimination. It was therefore reasonable for the RAD to conclude that the applicants have not met the high threshold required to demonstrate the existence of conditions that would jeopardize their life and safety if they relocate to the suggested IFAs (*Ranganathan*; *Jean Baptiste* at paras 20-21).

[33] Consequently, the applicants have not discharged their burden to demonstrate that the RAD's decision is unreasonable. The RAD's reasoning as to why the applicants have a viable IFA in the proposed IFAs is intelligible, transparent and justified (*Vavilov* at paras 15, 98). The RAD's findings on the potential IFAs are factual, based on the evidence and the arguments presented by the parties. I therefore find no basis upon which to intervene (*Singh* 2023 FC 1151 at para 19; *Singh* 2023 FC 1211 at para 38).

VI. Conclusion

[34] The RAD's decision is justified in light of the factual and legal constraints of this case (*Mason* at para 8; *Vavilov* at para 99).

[35] For these reasons, the application for judicial review is dismissed.

[36] No questions of general application have been submitted for certification, and the Court agrees there are none.

JUDGMENT in IMM-4142-23

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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