

Federal Court



Cour fédérale

**Date: 20240618**

**Docket: IMM-4629-23**

**Citation: 2024 FC 940**

**Ottawa, Ontario, June 18, 2024**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**PRAMJIT SINGH BRAR  
PARMJEET KAUR BRAR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (“RAD”) dated March 31, 2023, confirming the determination of the Refugee Protection Division (“RPD”) 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*”). The RAD upheld the RPD’s refusal of the refugee claim on the basis that the Applicants had a viable internal flight alternative (“*IFA*”) in Mumbai.

[2] For the following reasons, I find that the RAD’s decision is reasonable. This application for judicial review is dismissed.

## II. Analysis

### A. *Background*

[3] Parmjit Singh Brar (the “Principal Applicant”) and Parmjeet Kaur Brar (the “Associate Applicant”) are married citizens of India.

[4] The Applicants provided that in 2012, the Principal Applicant’s uncle (“*MS*”) was involved in the murder of a Sarpanch. They alleged that in 2017, the Sarpanch’s son (“*JS*”) used his political influence to harass *MS*’s son (“*PS*”), who was arrested. The Applicants provided that the Principal Applicant assisted in having *PS* released from detention, after which *PS* left home.

[5] The Applicants alleged that in July 2017, they travelled to Canada. They claimed that when they returned to India, the police questioned the Principal Applicant about *PS*’s whereabouts, and accused the Principal Applicant of having gone to Canada to “collect funds for the militants.”

[6] The Applicants maintained that on March 20, 2018, they were brought to the police station, where the Principal Applicant's fingerprints, photo, and signature were taken. They alleged that they were separated, and then tortured and abused. The Applicants further alleged that JS was at the station and indicated that he was the reason for their detention. The Applicants provided that their family paid a bribe for the release and the Applicants were released with reporting conditions.

[7] The Applicants alleged that in April 2018, they fled to New Delhi and stayed with family, and then travelled to Canada, whereupon they made a claim for refugee protection.

[8] In a decision dated November 29, 2022, the RPD found that the Applicants were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of *IRPA*.

[9] The RPD found the determinative issue to be the availability of an IFA in Mumbai. The test to determine a viable IFA requires that: (1) there is no serious possibility of persecution or risk of harm in the IFA; and (2) it is reasonable in the applicants' circumstances to relocate to the IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706). The second prong of the test places a high evidentiary burden on applicants to demonstrate that relocation to the IFA would be unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1367 ("*Ranganathan*").

[10] On the first prong of the test, the RPD overall found that the Applicants were not persons of interest to Punjab police, as they would not be individuals who would be discovered through

inter-state police communication, that their information would not be available in a police database or tracking system, and that the police would not be able to verify the identity of all people renting property.

[11] On the second prong of the IFA test, the RPD found that it would be reasonable for the Applicants to relocate to Mumbai. The RPD found that the Applicants could find people who speak their language in Mumbai, had work experience, and overall could “adapt to a new environment.” For these reasons, the RPD concluded that the Applicants were neither Convention refugees nor persons in need of protection.

[12] In a decision dated March 31, 2023, the RAD dismissed the Applicants’ appeal of the RPD’s decision.

[13] Before the RAD, the Applicants submitted that the RPD did not account for the Applicants’ circumstances, erred in the IFA analysis, made erroneous credibility findings, and failed to do separate analyses under sections 96 and 97 of the *IRPA*, respectively.

[14] The RAD first rejected an affidavit from the Principal Applicant that post-dated the RPD hearing, as it summarized allegations pre-dating the RPD decision and that were before the RPD, thus not being new evidence.

[15] The RAD further found that the Applicants had been given notice of an IFA being at issue, this issue having been raised at the beginning of the RPD hearing, and that the availability of an IFA in Mumbai was determinative.

(a) *First prong of the IFA test*

[16] On the first prong of the IFA test, the RAD found that JS and the police would not be motivated to track the Applicants to Mumbai.

[17] The RAD found that JS's "interest in the [Applicants] is secondary or ancillary" to that of the interest in PS, and that the fact that JS tracked the Applicants when they were in the area did not establish that he would track them to another.

[18] The RAD further found that the Applicants had not established that the police had the motivation to seek them out as militants, as the evidence was that the Applicants had been detained owing to JS, released from detention after paying a bribe, and, despite the five-year passage of time since their detention, there was "no evidence that the police have taken any formal steps against the Appellants in absentia despite having their fingerprints and signatures." Additionally, the RAD acknowledged that evidence provided by the Applicants did not show that JS or the police visited a relative of the Applicants' families in Punjab.

[19] The RAD further found that the evidence did not establish that the agents of persecution would have the means to find the Applicants in Mumbai, even assuming JS had influence with the police.

[20] The RAD found that the Applicants' submissions that the police in Mumbai were "high-tech" and that Mumbai was a "financial or business centre" were both vague and insufficient to explain how the agents of persecution would track them.

[21] The RAD concurred with the RPD that there would be no records of the Applicants maintained in the Crime and Criminal Tracking and Network System and therefore no routine background check would alert the police to the Applicants. The RAD further concurred with the RPD's finding regarding the tenant verification system, and found that the Applicants' Aadhaar data would not be shared with the police. The RAD found that there was insufficient evidence and explanation to substantiate the Applicants' submission about being located through technology, Google, or social media, and found that the Applicants could be expected to be safe with their social media use.

[22] The RAD further found that the evidence did not establish that the Applicants could be located through family or relatives, having not been discovered while staying with relatives in Delhi, the Principal Applicant's father being last visited in June 2022 by the police and having not been called to the station, and there being no evidence that the Associate Applicant's family had been visited in Punjab by the police.

[23] Finally, the RAD rejected the Applicants' submissions that the RPD erred by relying on a report by the United Kingdom House Office from the National Documentation Package and having assessed the claim "from a Canadian paradigm," and concluded that the Applicants had not established that the agents of persecution had the means to locate them in Mumbai.

(b) *Second prong of the IFA test*

[24] On the second prong of the IFA test, the RAD found the Applicants had not demonstrated that relocation to the proposed IFA would be unreasonable. The RAD acknowledged the Applicants' abilities in English, their post-secondary education, the Principal Applicant's work experience, as well as the Applicants' relative youth, ability to live in "an unfamiliar environment," and the Sikh population in Mumbai. The RAD further found that crime in Mumbai would not render relocation unreasonable, nor the Associate Applicant's circumstances.

[25] Finally, the RAD rejected the Applicants' submission that the RPD misapplied a Jurisprudential Guide and failed to consider indigeneship, neither of these features forming part of the RPD's decision. The RAD concluded that the second prong of the IFA test had not been established.

[26] For these reasons, the RAD dismissed the Applicants' appeal of the RPD's decision and upheld the RPD's finding that the Applicants were neither Convention refugees nor persons in need of protection.

B. *Issue and standard of review*

[27] The sole issue in this application is whether the RAD's decision is reasonable.

[28] The applicable standard of review of the RAD's decision is reasonableness, as per the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paragraphs 16-17.

[29] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[30] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

C. *The decision is reasonable*

[31] The Applicants submit that the RAD's decisions is unreasonable. I disagree. I find that the Applicants have not established that the decision is unreasonable (*Vavilov* at para 100).



[32] On the first prong of the IFA test, the Applicants maintain that Mumbai would not be safe for the Principal Applicant given that he is from a village and that Mumbai is a crime-ridden city, and given that the Punjab police are after him. The Applicants further maintain that the Applicants will be found in Mumbai, the RAD misapprehended the nature of JS's motivation, that the police would use all their means to find the Applicants, and that the RAD erred by failing to account that the police would be well connected "because of technology."

[33] The Applicants further submit that the RAD erroneously focussed on the Applicants' ability to travel to Mumbai, rather than the agents of persecutions' means and motivation, and erred in finding that the police could not locate the Principal Applicant. The Applicants submit that the RAD failed to consider the police's "actual capacity and motivation," instead focussing on whether there was a formal case against the Applicants.

[34] On the second prong of the IFA test, the Applicants submit that the RAD applied an unduly high threshold, implicitly required the Principal Applicant to have to live in hiding in Mumbai, failed to consider the relevant factors that would make it objectively unreasonable to live in Mumbai, and failed to consider "any" of the evidence the Applicants put forward regarding the second prong of the IFA test.

[35] The Respondent submits that the RAD's decision is reasonable and that the Applicants' submissions are unresponsive to the RAD's decision.

[36] On the first prong of the IFA test, the Respondent submits that the RAD reasonably found that JS would not track the Applicants owing to his interest in the Principal Applicant being “secondary,” that the police would not track him because they do not think he is a militant, and because the agents of persecution did not contact the Principal Applicant’s cousin in Delhi or his family in Punjab. The Respondent submits that there was insufficient evidence the police could track the Applicants to Mumbai, there being little inter-state police interaction, the Principal Applicant’s arrest not showing up on police records, and JS lacking the influence and ability to track the Applicants.

[37] On the second prong of the IFA test, the Respondent submits that the RAD applied the proper threshold from *Ranganathan*, did not make any implications about the Applicants having to live in hiding in Mumbai, and did not fail to consider evidence about the Applicants’ ability to live in Mumbai.

(a) *The first branch of the IFA test*

[38] I agree with the Respondent. The Applicants’ submissions are unresponsive to the RAD’s decision.

[39] Take, to start, the Applicants’ submissions that Mumbai is unsafe for the Applicants as a crime-ridden city and that the police could employ tactics to find the Applicants in Mumbai. These submissions made without reference to any evidence or the RAD’s decision. In my view, they are requests for the Court to make a decision in the RAD’s place on the issue of the agents

of persecution's means to find the Applicants. The Court does not do this when reviewing decisions for their reasonableness (*Vavilov* at para 83).

[40] The same is true of the Applicants' submissions regarding the degree of JS's motivation, with nowhere in Mumbai being safe as a result, as well the police's ability to track the Applicants given the police's resources and technology. These submissions do not challenge the RAD's finding that there was insufficient evidence regarding the motivation and means of JS and the police. I will not reweigh the evidence and decide these issues myself (*Vavilov* at paras 83, 125).

[41] The references the Applicants make to the record come from their submissions that the RAD overlooked the Applicants' evidence, did not have regard to the events that occurred before and after the Applicants left India, and took the Applicants' evidence out of context regarding the agents of persecution's means and motivation. The Applicants do not elaborate on which evidence was overlooked, taken out of context, or which events the RAD failed to consider. The Applicants have not shown that the RAD erred with respect to the first branch of the IFA test, nor displaced the presumption that the RAD considered all of the evidence (*Vavilov* at para 100; *Ali v Canada (Citizenship and Immigration)*, 2022 FC 1166 at para 43, citing *Toor v Canada (Citizenship and Immigration)*, 2022 FC 773 at para 21, *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 16-17).

(b) *The second branch of the IFA test*

[42] The Applicants' submissions that the RAD erred on the second prong of the IFA test are similarly meritless.

[43] The RAD clearly applied the proper threshold for whether relocation to Mumbai is unreasonable, quoting the entire statement of law from *Ranganathan* (at para 15).

*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA), which the Applicants state provides the proper threshold, was read in *Ranganathan* as establishing the test that the RAD relied upon in the decision (*Ranganathan* at paras 13-15).

[44] Furthermore, there is nothing in the decision to suggest that the RAD's analysis implicitly or explicitly required the Principal Applicant having to, in my colleague Justice Zinn's words, "remain in hiding or otherwise conceal his true identity so as to avoid detection by those who would harm him" in Mumbai (*Atta Fosu v Canada (Citizenship and Immigration)*, 2008 FC 1135 at para 15).

[45] Moreover, the Applicants' submission that the RAD erred by finding that Mumbai would be safe given the size of India and Mumbai's population confuses the RAD's decision with the RPD's decision. This is not the judicial review of the RPD's decision.

[46] The submission that the RAD failed to consider relevant factors under the second branch of the IFA test is unfounded, the RAD having acknowledged the Applicants' ability to speak

English, post-secondary education, their youth, the Principal Applicant’s work experience, the Sikh population in Mumbai, the Associate Applicant’s mental health, and the Applicants’ “indigeneship.”

[47] I am mindful of this Court’s ruling that “[i]n considering whether conditions in the proposed IFAs are such that it would be reasonable, in all of the Applicants’ circumstances, for them to seek refuge there, the RAD examines several factors, including language, employment, housing, the availability of healthcare, and the intersection of indigeneship” (*Mustapha v Canada (Citizenship and Immigration)*, 2022 FC 622 (“*Mustapha*”) at para 19).

[48] However, I do not read this holding as providing that these considerations form a checklist. Instead, the thrust of this holding is, in my view, a requirement to consider all of an individual’s circumstances. Factors for determining whether an IFA is objectively reasonable to relocate to cannot exhaust the analysis in determining whether relocation would be objectively unreasonable for the person relocating. Therefore, the fact here that the RAD did not mention the Applicants’ ability to secure housing in Mumbai is not determinative of the RAD’s analysis of the Applicants’ personal circumstances under the second branch of the IFA test.

(c) *Conclusion on the IFA test*

[49] The Applicants’ submissions generally amount to two different requests. The first is that the Court decide for itself whether Mumbai is a viable IFA for the Applicants. The second is to fault the RAD for findings it did not make.

[50] The Court denies both requests. They are not appropriate on reasonableness review (*Vavilov* at para 83).

III. **Conclusion**

[51] This application for judicial review is dismissed. The Applicants have not established that the RAD's decision is unreasonable (*Vavilov* at para 100). No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-4629-23**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed and there is no question to be certified.

“Shirzad A.”

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Judge

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

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**APPEARANCES:**

Rajender Singh FOR THE APPLICANTS

Michelle Brar FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

RST Law Professional Corp. FOR THE APPLICANTS  
Barristers and Solicitors  
Mississauga, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario