

Federal Court



Cour fédérale

Date: 20240821

Docket: IMM-9814-23

Citation: 2024 FC 1290

Ottawa, Ontario, August 21, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

NARINDERJEET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Narinderjeet Singh, the Applicant, seeks judicial review of the decision rendered by the Refugee Appeal Division [RAD] on July 17, 2023 [Decision] that dismissed his appeal and confirmed the Refugee Protection Division [RPD]’s decision. The RAD agreed with the RPD that Mr. Singh was not a Convention refugee nor a person in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27

[the Act]. The RAD found the availability of an internal flight alternative [IFA] in Delhi to be the determinative issue.

[2] For the reasons that follow, I will dismiss Mr. Singh's application for judicial review.

II. Context

[3] Mr. Singh is a citizen of India. On June 30, 2019, holding a multiple entry visitor visa, he arrived in Canada as a visitor, and on July 3, 2019, he claimed refugee protection. Based on his Basis of Claim form [BOC] and its amendments, Mr. Singh claimed fear of harm from members of the Indian National Congress and from the Punjab police due to his opposition to his local Congress Member of the Legislative Assembly and his imputed political beliefs. Mr. Singh claimed that upon his return to India from Canada in 2018, he was detained and interrogated about the activities of Sikh radicals active in Canada. He also claimed having been threatened, attacked and arrested.

[4] On September 29, 2022, the RPD rejected Mr. Singh's claim. The RPD found the determinative issue was the availability of and IFA in Delhi, and that the two prongs of the applicable legal test were met. The RPD raised several credibility issues relating to significant omissions or discrepancies between Mr. Singh's BOC form and his testimony regarding incidents at the airport in March of 2018, as well as events in Punjab in May and June of 2019.

[5] Mr. Singh appealed the RPD decision before the RAD. He submitted new evidence that he presented as (1) a copy of a voter registration card issued by Sikhs for Justice [SFJ] in the USA, enabling him to vote in a referendum about an independent Khalistan; and (2) various

photos of himself at the Khalistan Referendum allegedly held in Mississauga on November 6, 2022.

[6] On July 17, 2023, the RAD dismissed Mr. Singh's appeal and confirmed the decision of the RPD. In its overview, the RAD provided context and outlined the arguments raised by Mr. Singh in his appeal. The RAD accepted the new pieces of evidence, but particularly noted that no dates appeared on either the photos or on the voter registration card, and that neither of the pieces of new evidence was supported by an affidavit or sworn statement by Mr. Singh or any other person.

[7] The RAD proceeded to complete its independent analysis of the evidence and the IFA test. With respect to the first prong of the IFA test, the RAD found that Mr. Singh would be safe in Delhi; that the agents of harm had neither the motivation nor the means to pursue him in this city. With respect to the second prong of the IFA test, the RAD found that Mr. Singh had not discharged his onus to show that the proposed IFA failed, and concluded therefore that Delhi was not unreasonable as an IFA for Mr. Singh, given his circumstances.

III. Analysis

A. *Arguments raised and standard of review*

[8] Before the Court, Mr. Singh does not challenge the RAD's credibility findings. Mr. Singh submits three arguments, asserting that the RAD erred in its analysis and determination of the determinative IFA issue (1) as it failed to apply the relevant and updated objective documentary

evidence in the National Documentation Package [NDP], i.e., Tab 4.16 of the NDP, and as such, intentionally used an outdated NDP; (2) as it failed to address one of the arguments he raised on appeal, i.e., that he cannot be said to have a viable IFA since his family has been visited and harassed by his persecutors; and (3) in its unreasonably microscopic and inaccurate analysis and determination of his *sur place* claim, whereby the RAD concluded that he never argued or alleged that he was a supporter of an independent Khalistan, only that this was an imputed political opinion.

[9] The Respondent, the Minister of Citizenship and Immigration [the Minister], essentially submits that the RAD's assessment of the IFA test is reasonable.

[10] The RAD's conclusions regarding the existence of a viable IFA must be reviewed on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]; *Djeddi v Canada (Citizenship and Immigration)*, 2022 FC 1580 at paras 16-17 [*Djeddi*] citing *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 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 at para 17; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11).

[11] The Court must therefore determine whether the Decision is based on an "internally coherent and rational chain of analysis" that is justified in light of the legal and factual

constraints (*Vavilov* at para 85). Any deficiencies in a decision must be “sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100).

[12] The underlying principle to an IFA analysis is that international protection can only be provided if the country of origin cannot offer adequate protection throughout its territory to the person claiming refugee status. The onus rests upon the applicant to prove, on a balance of probabilities, that he risks a serious possibility of persecution throughout his entire country of origin (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA) at para 2 [*Thirunavukkarasu*] citing *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA) at 710 [*Rasaratnam*]; *Emezieke v Canada (Citizenship and Immigration)*, 2014 FC 922 at para 28; *Nunez Mercado v Canada (Minister of Citizenship and Immigration)*, 2011 FC 792 at para 12).

[13] The test for determining whether a viable IFA exists is two-pronged, as outlined by the RAD. First, the RAD must be satisfied on a balance of probabilities that there is no serious possibility that the applicant will be persecuted in the proposed IFA. Second, the conditions in the proposed IFA must be such that it is not unreasonable for the applicant to seek refuge there (*Djeddi* at para 21 citing *Thirunavukkarasu* and *Rasaratnam*).

[14] Mr. Singh bears the burden to demonstrate that the RAD’s Decision is unreasonable (*Vavilov* at para 100).

B. *First argument raised by the Applicant: The New National Documentation Package*

[15] Mr. Singh submits that the RAD failed to apply the relevant and updated objective documentary evidence in the Tab 4.16 of the NDP, and as such, intentionally used an outdated NDP. Mr. Singh asserts that the Tab 4.16 titled “Situation and treatment of members of Sikhs for Justice [SFJ] and their family members by authorities, including those returning from abroad; overseas monitoring capabilities of the government” was added to the newer version of the NDP and was not present on the older version, i.e., the version used by the RAD. Mr. Singh adds that said objective documentary evidence was crucial and determinative of his refugee appeal, since it confirmed that members of SFJ and their family members - even those returning from abroad - cannot be said to have a viable IFA in all of India, due to the international monitoring capabilities of the Indian government. Mr. Singh asserts that the RAD confirmed he became a member of SJF and that the RAD's Decision to premise its entire IFA analysis and determination on the older version of the NDP, which did not include Tab 4.16, was thus unreasonable and constituted reviewable error.

[16] The Court recently outlined the applicable principles in *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1097 [*Singh*]. First, it stated that the RAD should consider the most recent NDP in assessing risks even if a new version only becomes available after the parties' submissions (*Singh* at para 16 citing *Kamara v Canada (Citizenship and Immigration)*, 2024 FC 13 at para 31 [*Kamara*]). The Court then noted that the “jurisprudence holds that it may be reasonable for the RAD to rely on older versions of the NDP unless there is ‘different, novel and significant’ information in the new NDP that was unavailable when the applicants made their argument” (*Singh* at para 17 citing *Siddique v Canada (Citizenship and Immigration)*, 2022 FC

964 at para 21). At last, the Court confirmed that a claimant seeking to criticize the RAD for failing to consider new documentary evidence must show that the new information is “sufficiently different, novel and significant and could change the decision” (*Singh* at para 18 citing *Kamara* at para 33).

[17] As in the Court’s decision in *Singh* above, even if I were to accept that the information is different, novel and significant, Mr. Singh has not related the information and country conditions to his personal circumstances and allegations, and he has thus not demonstrated that the RAD’s analysis would have changed. The section of Tab 4.16 of the NDP Mr. Singh points to addresses the overseas monitoring capabilities of the government and speaks more specifically to SFJ leaders, operatives, activists and known members actively involved in politics. Mr. Singh adduced no evidence to establish such a profile. In fact, contrary to his assertion, the RAD has not confirmed he is a member of SFJ, rather the RAD stated that the new evidence Mr. Singh adduced “is relevant as [it] raises an entirely new – *sur place* – claim pertaining – not to the Appellant’s imputed – but his actual, political opinion” (RAD’s Decision at para 11). Although the RAD accepted the voter registration card and photos as new evidence, it highlighted that no affidavits had been provided; the RAD found that Mr. Singh did not make any new allegations that he actually held the political opinions which he previously characterized as imputed, and as outlined below, this finding is reasonable, there was no such evidence in the record. Accordingly, there is no evidence that Mr. Singh’s profile corresponds to one described in the documentary evidence asserted.

[18] In summary, Mr. Singh has not demonstrated how the newer Tab 4.16 of the NDP would have changed the RAD decision given the evidence adduced and Mr. Singh's established profile. Mr. Singh has not shown the RAD's decision to be unreasonable or, as he asserts, that procedural fairness was breached.

C. *Argument relating to the Applicant's family as a means for the persecutors*

[19] Mr. Singh argues the RAD ignored and completely failed to address an entire portion of his arguments on appeal – specifically, submissions that proved that his persecutors clearly have the requisite means and motivation to pursue and locate him. He further argues that this Court in the past has legally entrenched that, in cases such as his, where his family members have been approached by his persecutors to solicit his whereabouts, there cannot be said to be an IFA for the Applicant. Mr. Singh's Memorandum before the RAD referred to *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*]; *AB v Canada (Citizenship and Immigration)*, 2020 FC 915 [*AB*] and *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586 [*Huerta*] to support his argument.

[20] The Minister responds that the *Ali*, *AB* and *Huerta* cases cited by Mr. Singh can be distinguished from the present matter as in these cases, there were dire and serious threats of harm and violence made against the family members themselves, and there is no such evidence here. The Minister adds that in any event, the RAD is not required to discuss every piece of evidence in its decision.

[21] I note that, in the Memorandum he submitted to the RAD, Mr. Singh argued, *inter alia*, that the RPD's determination that the police do not have the means and motivation to locate Mr. Singh through his family members was based on an absolute distortion of the law that, he asserted had been entrenched by the Federal Court. More specifically, at paragraph 12 of his Appellant Memorandum, Mr. Singh stated that:

The Federal Court in *Ali* explained, in crystal clear terms, that if the Applicants' family has been directly approached about the whereabouts of the Applicants, the latter cannot be said to have a reasonable IFA,

The above-cited case law of *Ali*, *AB*, and *Huerta*, confirm that, because the Appellant's family has been visited and harassed by the police in search of him, the Appellant is unequivocally unsafe in Delhi or in any suggested IFA location, unless he hides his whereabouts from his family members which - as the case law has established - would be unreasonable to compel the Appellant to live in hiding in the suggested IFA.

As such, the Appellant cannot be said to have an IFA throughout India since he has presented credible evidence that his family members continue to be visited and harassed by his persecutors to solicit his whereabouts.

[22] As I stated in *Kodom v Canada (Citizenship and Immigration)*, 2023 FC 305, the holdings in the cases relied upon by Mr. Singh are fact-specific and cannot be generalized to every IFA situation (*Essel v Canada (Citizenship and Immigration)*, 2020 FC 1025 at para 15). Madame Justice Jocelyne Gagné confirmed as much in *Aulakh v Canada (Citizenship and Immigration)*, 2023 FC 1176, *Ali* is fact-based and cannot be generalized to every IFA. Mr. Singh's situation is easily distinguishable from that found, in *Ali* for example. Moreover, the situation must be based on the facts found by the RAD, not on the facts alleged by the applicants (*Pastrana Acosta v Canada (Citizenship and Immigration)*, 2023 FC 139 at paras 6–9).

[23] In this case, the RAD noted that Mr. Singh had initially alleged that shortly after he arrived in Canada, police raided his family home in search of him, leaving a summons to report to the local police station and that his family went into hiding. The RAD went on to note Mr. Singh's testimony that he had learned that his family had indeed returned to their home after an arrangement was brokered with the police by the village elders providing that, should Mr. Singh return, the elders would require him to report to the police. That does not compare to the factual situation in *Ali* and *Huerta* where there were dire and serious threats of harm and violence made against the family members themselves. There is no such evidence here.

[24] Given the factual context in this case, Mr. Singh's argument must fail. The RAD did note the arguments Mr. Singh raised on appeal and confirmed his testimony with respect to his family's situation at paragraph 4 of its Decision. It was reasonable for the RAD not to address this argument further given the case law and Mr. Singh's testimony.

D. Sur place *claim*

[25] Mr. Singh argues that the RAD's conclusion that his "sur place" refugee claim must fail since "the Appellant never argued or alleged that he was a supporter of an independent Khalistan, only that this was an imputed political opinion" was unreasonably microscopic and simply inaccurate. He stresses that in the present case, he clearly argued that he could not exercise his right to his political opinion - as a Khalistan supporter - in the IFA, in the submissions that were presented to the RAD in support of his appeal. He adds that the RAD's determination that he did not have a refugee "sur place" claim, since he never expressed that he

supported Khalistan, only that it was “imputed” on him, was unreasonable and constituted a reviewable error.

[26] In its Decision, the RAD noted that Mr. Singh (1) had not established that his activities while in Canada have come to the attention of the Indian authorities or have had any impact on his ability to relocate to Delhi; (2) had not made any new allegations that he actually holds the political opinions which he previously characterized as imputed; (3) adduced no written affidavit or letter to accompany the voter registration card and photographs explaining his motivation to become politically involved in the movement for an independent Khalistan, he only argued that the new evidence supported his initial argument that he has no safe IFA anywhere in India because of his imputed political opinion; and (4) had not disclosed any evidence that his recently embraced political views were disclosed to anyone but the RAD.

[27] The RAD thus ultimately concluded that Mr. Singh had not established that his activities while in Canada have come to the attention of the Indian authorities or have had any impact on his ability to relocate to Delhi.

[28] The RAD’s finding is not unreasonably microscopic as Mr. Singh argues, and it goes to the source of the agents of harm’s motivation to pursue him. The exam of the record confirms that Mr. Singh has made no allegations that he actually holds the political opinion which he previously characterized as imputed, and more importantly, the record supports the RAD’s conclusion that Mr. Singh has not demonstrated that any activities in Canada have come to the

attention of the Indian authorities or have had any impact on his ability to relocate in Delhi.

Accordingly, the RAD did not err in this regard.

IV. Conclusion

[29] Mr. Singh has not shown the Decision is unreasonable. Given the record and the evidence before the RAD in this case, I am convinced its Decision bears the hallmarks of reasonableness, i.e., justification, transparency and intelligibility, and that it is reasonable (*Vavilov* at para 99).

[30] No question of general importance was proposed and I agree that none arises.

JUDGMENT in IMM-9814-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

“Martine St-Louis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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