Federal Court  Cour fédérale

Date: 20240916

Docket: IMM-10598-23

Citation: 2024 FC 1449

Toronto, Ontario, September 16, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

KARAMJIT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Karamjit Singh [Applicant], is a citizen of India who claimed refugee status on the basis of his fear of Indian authorities who he alleges have falsely accused him of associating with "anti-national" supporters of Jammu and Kashmir. The Refugee Protection Division [RPD] determined that the Applicant is not a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC

2001, c 27, by reason of the availability of a viable Internal Flight Alternative in Kolkata or Mumbai [the IFAs]. The Applicant's appeal to the Refugee Appeal Division [RAD] was dismissed by decision dated July 29, 2023 [RAD Decision].

[2] The Applicant seeks judicial review of the RAD Decision on the basis that the RAD committed numerous fatal errors in its IFA analysis.

[3] For the reasons that follow, I find that the Applicant has not discharged his burden of showing that the RAD Decision is unreasonable. Accordingly, this application for judicial review is dismissed.

II. Legal Framework

[4] The viability of an IFA is assessed using a two-pronged test (*Rasaratnam v Canada (Minister of Employment and Immigration) (C.A.)*, [1992] 1 FC 706 [*Rasaratnam*] at 710). Under the first prong, it must be established on a balance of probabilities that the claimant would not face a serious possibility of persecution in the proposed IFA (*Rasaratnam* at 710). The agents of persecution must be shown to have both the motivation and means to search for the claimant in the IFA (*Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46). Under the second prong, the decision maker must establish that conditions in the proposed IFA are such that it would not be unreasonable in all the circumstances for the claimant to seek refuge there (*Rasaratnam* at 709).

[5] Once both prongs are established and an IFA is proposed, it is the claimant who bears the onus to establish that the proposed IFA is not reasonable (*Rasaratnam* at 711).

III. Facts

A. *Events in Gurdaspur, Punjab, India*

[6] While the Applicant was working at his father's dairy farm in Gurdaspur, Punjab, India, he befriended five students from Jammu and Kashmir (a union territory under Indian control) who were attending a nearby school [the Students]. When army convoy attacks occurred in Jammu and Kashmir in 2019, the Students became scared for their safety and the Applicant let them stay at his family's farmhouse for over a week.

[7] In August 2019, the Indian government revoked the autonomous status of Jammu and Kashmir causing unrest throughout India. The Students left the area, but soon after, the Punjab police visited the Applicant's home looking for them. Since the Applicant was travelling overseas at the time, the Punjab police questioned his parents and instructed that the Applicant report to them when he returned from his trip.

[8] When the Applicant returned home in September 2019, his father brought him to the Punjab police, as instructed. The Applicant was detained for five days, interrogated and tortured. The village panchayat (i.e., village council) intervened and paid a bribe to secure his release. The Punjab police collected the Applicant's fingerprints and signature and instructed him to report to them once a month.

[9] When the Applicant reported to the Punjab police, he was detained yet again. The Punjab police questioned and threatened him. They released him upon payment of a bribe, this time paid by his father.

[10] The Applicant fled India and came to Canada. The Punjab police continued to visit the Applicant's father in 2021. He advised the police that the Applicant was living in Toronto.

B. *The Applicant's activities in Canada*

[11] The Applicant joined Sikhs for Justice and participated in a car rally in support of Sikhs for Justice. The Applicant also voted in the Khalistan Referendum on November 7, 2022 in Mississauga [the Referendum], after which the Punjab police visited the Applicant's parents again in India to question them about the Applicant's activities and his part in the Referendum. His parents denied the Applicant's participation, but the Punjab police nonetheless threatened his parents by saying that they will take action against people who participated in the Referendum and their family.

[12] The Applicant claims that the Punjab police continued to visit his parents, and his family were subject to threats and humiliation. After the most recent visit, the Applicant's parents left the area to live with their distant relatives.

C. *The RPD Decision*

[13] On January 11, 2023, the RPD refused the Applicant's refugee protection claim because the RPD found viable IFAs. The RPD concluded that there was not enough credible and reliable evidence to establish the motivation and means of the Punjab police to pursue the Applicant to the IFAs even when accounting for his *sur place* claims.

[14] The RPD concluded that the Punjab police actions amounted to an extrajudicial arrest, and that there is no evidence that the Applicant's name appears in the police database in India known as the Crime and Criminal Tracking Network and Systems [CCTNS]. The RPD concluded that Indian authorities would not know of the Punjab police's interest in the Applicant.

[15] Under the second prong, the RPD found that the Applicant failed to establish that the IFAs are unreasonable in all of the circumstances.

D. *The RAD Decision*

[16] The RAD confirmed the RPD's decision based on its own independent IFA analysis. The determinative issues for the RAD were its findings that the Applicant was the subject of an extrajudicial arrest and there is insufficient evidence to suggest that the Punjab police are working with the police from other states and have the motivation and means to track him.

[17] The RAD also considered the Applicant's *sur place* claim, and found there was insufficient evidence to establish a basis for a forward-facing risk in the IFAs.

IV. Issues and Standard of Review

[18] The Applicant has raised a number of errors on the part of the RAD in conducting its IFA analysis. All of these errors go to the merits of the RAD Decision.

[19] The applicable standard of review of the merits of an administrative decision maker's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). In reviewing a decision, the Court must consider whether the decision is justified, transparent, and intelligible (*Vavilov* at para 99) and whether the RAD's analysis is defensible in respect of the facts and the law that constrained the decision maker (*Vavilov* at para 85). This Court must refrain from reweighing and reassessing the evidence and must only intervene if there are sufficiently serious shortcomings in the RAD Decision or if the RAD has failed to consider central issues raised by parties (*Vavilov* at paras 125 and 128).

V. Analysis

[20] The Applicant alleges that the RAD committed multiple errors under the First and Second Prongs of the IFA Test.

A. *Did the RAD err by making an improper plausibility finding and/or veiled credibility finding?*

[21] The Applicant alleges that the RAD erred by making a plausibility finding that was not made in the "clearest of cases." The Applicant alternatively argues that the RAD made a veiled credibility finding without providing justification and in circumstances where the Applicant was found to be a credible witness.

[22] The impugned part of the RAD Decision is as follows:

> While there is ample evidence that police regularly commit human rights abuses in custody and fail to follow correct procedures, the evidence also establishes that police take crime and terrorism very seriously. I therefore find it highly unlikely that if the Appellant was in fact wanted by the police to the extent alleged, that he would be released from detention with bribes and allowed to return home with the sole condition of reporting once per month.

[23] I disagree with the Applicant's characterization of the RAD's reasons. The RAD did not find any fact asserted by the Applicant to be implausible, nor did the RAD find the Applicant not to be believed on his assertion of these facts: it accepted that the Applicant was detained by the police and released upon payment of a bribe.

[24] What the Applicant takes issue with is the inferences the RAD drew from these facts. The RAD chose to infer from the fact that bribes were enough to set the Applicant free with relatively minimal conditions that the Punjab police did not have a high degree of interest in the Applicant. This was open to the RAD and was justified on the record.

[25] The Applicant cites different evidence in the National Document Package [NDP] that suggests that those who are perceived to support or be affiliated with Sikh militants are at serious risk of persecution. Even if I were to find that the evidentiary record supports more than one inference, the Applicant has not shown the inference drawn by the RAD to be unreasonable which is insufficient (*Canada (Public Safety and Emergency Preparedness) v Korasak*, 2021 FC 1047 [*Korasak*] at para 56).

[26] Nor do I agree with the Applicant's submission that the RAD failed to consider critical evidence or submissions made by him on this issue. In fact, the Applicant acknowledges in his written argument that this contrary objective country evidence in the NDP was brought to the RAD's attention. The RAD is presumed to have considered this evidence, even if it was not expressly addressed (*Kaur v Canada (Citizenship and Immigration)*, 2022 FC 686 at para 31).

B. *Did the RAD err in finding that the Indian authorities could not track the Applicant?*

[27] The Applicant submits that the RAD erred in four ways in finding that the Indian authorities could not track the Applicant in the IFAs, including through the CCTNS database.

[28] First, the Applicant submits that it is not speculative or unreasonable to conclude that the police entered the Applicant's fingerprints and signature into some kind of recordkeeping database, yet the RAD dismissed this suggestion on the basis of a Response to Information Request [RIR] in the NDP which states that no official record of extrajudicial arrests is maintained. The RAD considered the Applicant to have been subject to an extrajudicial arrest

given that he was never properly charged, no First Information Report [FIR] (the form that starts the investigation process) was registered, and he was not brought before proper officials.

[29] The Applicant takes issue with this finding, noting that the same RIR also states that searches for suspects in the CCTNS is possible, and that 62% of photographs of arrested or missing persons have been entered into the CCTNS. Even if I were to accept this reading of the evidence as relevant to the Applicant (which is not obvious, since the evidence is that the Applicant has not been suspected of a crime, arrested for a crime, nor considered to be a missing person), it remains that the existence of an alternative reasonable interpretation of the objective country evidence does not detract from the reasonableness of the RAD's interpretation of the evidence (*Korasak* at para 56).

[30] The Applicant also argues in the alternative that the RAD should have found that it is likely that the Applicant's photo and fingerprints were entered into a database by applying the "benefit of the doubt" principle recognized in *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593. This principle originates from the guidelines of the *United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee* Status [UNHCR Handbook] and is intended to assist applicants who often cannot provide stringent evidentiary support for their subjective claims due to their position as persons fleeing persecution.

[31] The benefit of the doubt principle cannot assist the Applicant. The Federal Court has held that the principle does not apply in circumstances where the decision maker believes a

claimant's story as told to them, but as in this case, finds that there is no objective basis for the claimant's fear of persecution (*Sedigheh v Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 239 at paras 54 to 56).

[32] Third, the Applicant argues that the RAD failed to take into account the seriousness of the allegations against him in determining that he is not wanted by Indian authorities at a national level. The Applicant points to evidence in the NDP that states that law enforcement agencies, including those in Punjab, are controlled by the central government and suspected supporters of Khalistan are not safe anywhere in India.

[33] I find that the RAD meaningfully addressed the Applicant's argument, but still found no evidence that the Punjab police are working with police from other states to track him. This finding, coupled with the RAD's finding that there was no evidence the Applicant has been entered into any police or crime database, means that there is no basis for the suggestion that he can be traced to an IFA through the coordinated efforts of the Punjab police and authorities in the IFA. These findings were open to the RAD on the record and they are not inconsistent with the NDP evidence: an anti-nationalist activist in Punjab may well be subject to a serious possibility of persecution in all of India, but only if the local agents of persecution share that information at a national level.

[34] Fourth, the Applicant submits that the RAD analysis is flawed because it failed to understand the significance of the evidence, including the evidence from the village sarpanch that the Punjab police already know about his overseas activism. According to the Applicant,

this evidence supports a well-founded fear that the police will put his information into the crime database even if it had not done so in the past.

[35] I agree with the Respondent that the RAD meaningfully considered this argument as well as the evidence of the village sarpanch. Ultimately, the RAD found the Applicant to have engaged in "limited" pro-Khalistan activities in Canada, and given his lack of political profile or history of Khalistan activism in India, the RAD found there to be insufficient evidence to demonstrate that he would be perceived as a Sikhs for Justice activist. The RAD also found that there was insufficient evidence to establish that the Punjab police are aware that the Applicant voted in the Referendum since his parents denied it. Absent a misapprehension of the evidence, which I do not find here, this Court is not entitled to interfere with RAD's assessment and weighing of the evidence (*Vavilov* at para 125).

C. *Did the RAD err in imposing too high an evidentiary burden in determining future risk?*

[36] The Applicant submitted that the RAD imposed too high an evidentiary burden on the determination of his future risk of persecution in the IFAs. The Applicant argues that he need only establish past facts on a balance of probabilities and show that there is more than a mere possibility of future persecution (citing *Gomez Dominguez v Canada (Citizenship and Immigration)*, 2020 FC 1098 at paras 17-19).

[37] I note that the Applicant criticized the RPD for erring in the same way. While the Applicant cited numerous portions of the RPD Decision in support of this argument (which the RAD ultimately found were not indicative of an error), the Applicant has not cited any portion of

the RAD Decision to support the argument as against the RAD. Instead, the Applicant acknowledges that the RAD refers to the proper standard but then criticizes the RAD for failing to say how it applies that standard throughout its reasons.

[38] The Applicant is seeking a level of perfection in the RAD Decision that is itself unreasonable: the fact that a decision does not include "all the arguments, statutory provisions, jurisprudence or other details" either the Applicant or the Court would have preferred is not a basis for setting the decision aside (*Vavilov* at para 91).

D. *Did the RAD err in its assessment of the reasonableness of the IFA?*

[39] The Applicant submits that the RAD erred in not applying Federal Court case law that has held that it is unreasonable to expect family members to place their own lives in danger by either denying knowledge of the Applicant's whereabouts or deliberately misleading the agent of persecution (*Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 at para 49).

[40] The RAD distinguished the Applicant's case from this line of jurisprudence by concluding that while the Applicant's family was questioned, the Punjab police do not have the motivation to pursue the Applicant in the IFA, hence there is no need to lie about the Applicant's whereabouts. The RAD further found that the Applicant's family has not been threatened or harmed, and that it is reasonable to expect the family to display a "modicum of discretion" when revealing the Applicant's whereabouts.

[41] The Applicant submits that this finding is unreasonable, because the family was in fact threatened and it is unacceptable for the Applicant's family to "essentially have to lie" by being discrete about the Applicant's whereabouts.

[42] I do not find the RAD's finding to be contrary to Federal Court jurisprudence. First, the RAD does not expect the Applicant's family to lie about the Applicant's location. Second, the RAD properly considered that the Applicant's concern was different from threats or harm to a family for having hid the Applicant's location from the agents of persecution, which in this case had not occurred. Contrary to the Applicant's submission, the distinction between lying and being discrete about the Applicant's location is self-explanatory and the fact that it is not supported by any jurisprudence does not render it unreasonable.

VI. Conclusion

[43] I find the RAD Decision bears the hallmarks of a reasonable decision: it is intelligible, transparent and justified based on the facts and the law that constrained the RAD. Accordingly, this application is dismissed.

JUDGMENT in IMM-10598-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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