

Federal Court



Cour fédérale

Date: 20240924

Docket: IMM-9018-23

Citation: 2024 FC 1501

Montreal, Quebec, September 24, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

INDERJIT SINGH NIJJAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Inderjit Singh Nijjar, is seeking judicial review of a decision dated June 26, 2023 [Decision] whereby the Refugee Appeal Division [RAD] dismissed his appeal and confirmed the Refugee Protection Division's [RPD] decision. His claim for refugee protection under both sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27

[IRPA] was rejected because the RAD identified viable internal flight alternatives [IFA] in Mumbai and Kolkata, both cities located in his country of citizenship, India.

[2] Mr. Singh Nijjar submits that the RAD erred in its determination of viable IFAs by improperly considering the new evidence it had admitted.

[3] For the reasons that follow, this application for judicial review will be dismissed. In my view, the RAD's Decision was responsive to the evidence, and its findings regarding the IFA locations in Mumbai and Kolkata have the qualities that make the RAD's reasoning logical and consistent in relation to the relevant legal and factual constraints. Mr. Singh Nijjar failed to discharge his onus to convince the RAD that the IFAs were not viable.

II. Background

A. *The factual context*

[4] Mr. Singh Nijjar is a citizen of India from the district of Jalandhar, in the state of Punjab. He is married and his wife and a child still reside in India. He is also a member of the Shiromani Akali Dal [SAD], a political party active in Punjab.

[5] Mr. Singh Nijjar's refugee claim was based on his fear of persecution at the hands of Mohinder Singh Kaypee [Mohinder] — a former Member of the Legislative Assembly of the Indian National Congress Party [Congress Party] — and the Punjab police, who he believes have colluded with Mohinder.

[6] During the 2017 Punjab state election, Mr. Singh Nijjar campaigned for a SAD candidate and against Mohinder. During the campaign, he was allegedly beaten by unknown men and warned not to speak out against Mohinder. Mohinder then lost the election and blamed Mr. Singh Nijjar for his defeat. Mr. Singh Nijjar was again threatened and attacked.

[7] In September 2017, Mr. Singh Nijjar left India and travelled to Canada. He eventually made a claim for refugee protection.

[8] After his departure from India, Mr. Singh Nijjar's father, who is also a member of SAD, went missing. Mr. Singh Nijjar believes that Mohinder is behind his father's disappearance.

[9] On February 11, 2021, the RPD rejected Mr. Singh Nijjar's claim as it found that viable IFAs existed for him in Mumbai or Kolkata.

B. *The RAD's Decision*

[10] Mr. Singh Nijjar appealed the RPD's decision to the RAD, arguing that the RPD erred in its IFA analysis.

[11] On November 29, 2021, the RAD dismissed Mr. Singh Nijjar's appeal. However, this Court overturned the decision and remanded the matter to the RAD in light of the RAD's failure to consider an updated version of the National Documentation Package for India [NDP]. In 2023, the RAD reopened the appeal and informed the parties that it would consider the new NDP. In its

reconsideration of the matter, the RAD gave Mr. Singh Nijjar an opportunity to make submissions on the new NDP evidence.

[12] Mr. Singh Nijjar also submitted two new letters to the RAD, which were both accepted as new evidence.

[13] Both letters come from residents of villages near Mr. Singh Nijjar's village in the state of Punjab. In the first letter, the affiant declares that he has learned that Congress Party members and the Punjab police are still actively searching for Mr. Singh Nijjar, as they are harassing and intimidating the latter's family. The second letter is from one of Mr. Singh Nijjar's co-workers in India, who notably states that Congress Party members have threatened him to disclose Mr. Singh Nijjar's location.

[14] After examining the new evidence, the RAD conducted a new IFA analysis and again dismissed Mr. Singh Nijjar's appeal. It determined that the RPD was correct in finding that valid IFAs were available for Mr. Singh Nijjar in Mumbai and Kolkata.

[15] Regarding the first prong of the IFA test, the RAD agreed with the RPD that Mr. Singh Nijjar did not face a serious risk of persecution or harm in Mumbai or Kolkata. According to the RAD, Mr. Singh Nijjar was unable to prove that Mohinder, the Punjab police, or the Congress Party had the means or motivation to pursue him in Mumbai or Kolkata.

[16] The RAD provided lengthy reasons justifying its conclusion under the first prong. First, it was not the Punjab police that was persecuting Mr. Singh Nijjar, rather only a few rogue police

officers acting at the behest of Mohinder. Second, the NDP indicates that Mr. Singh Nijjar would be free to express his political opinions in the IFA locations. Third, it is unlikely that Mr. Singh Nijjar could be tracked using the Crime and Criminal Tracking Network and Systems database, the tenant verification system, or his Aadhaar card information. Fourth, neither Mr. Singh Nijjar's wife nor his mother mentioned being victims of harassment or intimidation in their affidavits. Fifth, since Mr. Singh Nijjar's last encounter with Mohinder — some five years ago —, the Punjab police have only enquired about his whereabouts in two local villages. Finally, considering the police's limited enquiries, even if Mr. Singh Nijjar's family or friends were to disclose his IFA location, both Mohinder and the Punjab police would lack the motivation to pursue him to his new city.

[17] As for the second prong of the IFA test, the RAD joined the RPD in determining that, based on Mr. Singh Nijjar's age, education, religion, language and work experience, it would be objectively reasonable for him to relocate to Mumbai or Kolkata.

C. *Standard of review*

[18] It is not disputed that the standard of reasonableness applies to the Decision under review and to findings regarding the existence of a viable IFA (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1554 at para 18; *Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557 at para 16; *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 [*Singh 2020*]). 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*]).

[19] 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).

[20] Such a review must include a rigorous 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).

[21] 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

[22] Mr. Singh Nijjar contends that the RAD erred in its analysis of the first prong of the IFA test by allegedly disregarding the new evidence he submitted. He claims that, since the two letters reveal that the Punjab police is still enquiring on his whereabouts and has been harassing his family, it is motivated to find him in Mumbai or Kolkata. As a result, the IFAs would not be viable because Mr. Singh Nijjar can be tracked through his family and friends and it would be unreasonable to expect them to risk their lives in order to hide his location.

[23] I do not agree and I am not convinced by the submissions put forward by Mr. Singh Nijjar.

[24] As pointed out by the respondent, the Minister of Citizenship and Immigration [Minister], the RAD correctly applied the two-prong IFA test and reasonably concluded that Mr. Singh Nijjar has a viable IFA in Mumbai or Kolkata. In my view, Mr. Singh Nijjar has not established that the Punjab police or Mohinder have the necessary motivation to track and persecute him in the IFA locations.

A. *The applicable test on IFA determinations*

[25] The test to determine the existence of a viable IFA comes from *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*]. These decisions from the Federal Court of Appeal state that two criteria must be established, on a balance of probabilities, in order to find that a proposed IFA is reasonable: 1) there must be no serious possibility of the claimant being subject to persecution in the part of the country in which the IFA exists; and 2) it must not be unreasonable for the claimant to seek refuge in the IFA, upon consideration of all their particular circumstances.

[26] In *Singh 2020*, the Court reminded that “the analysis of an IFA is based on the principle that international protection can only be offered to refugee protection claimants in cases where the country of origin is unable to provide to the person requesting refugee protection adequate protection everywhere within their territory” [emphasis added] (*Singh 2020* at para 26). If a refugee claimant has a viable IFA, this will negate a claim for refugee protection under either section 96 or 97 of the IRPA, regardless of the merits of other aspects of the claim (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 7).

[27] When an IFA is established, the onus is on the refugee claimant to demonstrate that the IFA is inadequate (*Thirunavukkarasu* at para 12; *Salaudeen v Canada (Citizenship and Immigration)*, 2022 FC 39 at para 26; *Manzoor-Ul-Haq v Canada (Citizenship and Immigration)*, 2020 FC 1077 at para 24; *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paras 43–44).

[28] Mr. Singh Nijjar does not contest the RAD's analysis under the second prong of the IFA test. I am indeed satisfied that the RPD and the RAD properly concluded that it would not be unreasonable for Mr. Singh Nijjar to relocate to Mumbai or Kolkata, given his particular circumstances and profile. Therefore, the only issue before the Court is whether the RAD's conclusions on the first prong are reasonable.

B. *There is no serious possibility of persecution or likely risk of harm in the IFA locations*

[29] The RAD provided clear explanations for its finding that the new evidence was insufficient to establish that either Mohinder or the Punjab police would be motivated to pursue Mr. Singh Nijjar to the IFAs. The RAD deemed the two letters to be credible, but was only satisfied that either Mohinder or the Punjab police have enquired about Mr. Singh Nijjar's whereabouts in his own village and another nearby village. According to the RAD, the new evidence alone could not establish, on the balance of probabilities, that Mr. Singh Nijjar's family had been harassed or intimidated by Congress Party members or the Punjab police. It noted that both Mr. Singh Nijjar's wife and his mother had not attested having suffered any harassment or intimidation in their affidavits. If such events had taken place, the RAD asserted that it would have been reasonable to expect Mr. Singh Nijjar's wife and his mother to mention them.

[30] A party challenging an administrative decision must satisfy the reviewing court that "any shortcomings or flaws relied on are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). In this case, I am not persuaded that there is any such shortcoming in the RAD's assessment of the new evidence. The RAD was free to determine that while the two letters were credible, they did not demonstrate, on the balance of probabilities, the

required motivation from Mr. Singh Nijjar's persecutors to follow him to the IFAs. Indeed, it is well established that the presumption of truth or reliability of statements made by refugee applicants cannot be equated with a presumption of sufficiency (*Sagbohan v Canada (Citizenship and Immigration)*, 2024 FC 804 at para 18; *Blidee v Canada (Citizenship and Immigration)*, 2019 FC 244 at para 16; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 43).

[31] Mr. Singh Nijjar argues that the IFAs are not valid because the RAD recognized that Mohinder or the Punjab police could discover his whereabouts through his family or friends. Relying on *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*], he submits that it would be unreasonable to expect his family or friends to lie to his persecutors and that being unable to share his location with them is akin to hiding, thus making any IFA unreasonable.

[32] In my view, *Ali* does not apply in the present matter. I have discussed in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1715 [*Singh 2023*] how cases such as *Ali* or *AB v Canada (Citizenship and Immigration)*, 2020 FC 915 [*AB*] can be distinguished from the present matter. In *Ali* and *AB*, not only was there evidence of the agents of persecution's motivation, but there were also dire and serious threats of harm and violence made against the family members themselves. 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 their acquired information. There is no such evidence here. As noted above, the RAD reasonably determined that there is no evidence of any capacity of the local Punjab police or Mohinder to locate Mr. Singh Nijjar outside of Punjab (*Singh 2023* at para 47; see also *Singh v Canada*

(*Citizenship and Immigration*), 2024 FC 1080 at paras 21–24; *Chatrath v Canada (Citizenship and Immigration)*, 2024 FC 958 at paras 22–24, 26–29). Nor is there sufficient evidence of direct threats of harm and violence against Mr. Singh Nijjar’s family members.

[33] It is true that the two new letters submitted by Mr. Singh Nijjar state that there are threats against family members. However, his wife and mother did not refer to any such threats in their own affidavit evidence. One could reasonably expect them to mention these alleged threats, as they themselves are the alleged victims.

[34] As the Court noted in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1151 at paragraph 17, the holdings in *Ali* or *AB* are fact-specific and cannot be generalized to every IFA situation. In the current case, there was insufficient evidence that the agents of persecution had the motivation to locate Mr. Singh Nijjar. Mohinder’s and the Punjab police’s mere knowledge of Mr. Singh Nijjar’s whereabouts, assuming the families and friends would disclose it, does not establish a serious possibility of persecution or risk in the proposed IFA cities if the agents of persecution have neither the means nor the motivation to act on it.

[35] The RAD observed that contrary to the situation in *Ali* or *AB*, there was insufficient evidence to establish that either Mohinder or the Punjab police would be motivated to pursue Mr. Singh Nijjar to the IFA locations, or that his family members faced threats to their life or safety.

[36] As the Minister stated in his submissions, an agent of persecution’s mere knowledge of the refugee claimant’s whereabouts does not in itself establish risk or danger if they are unable or unwilling to act accordingly (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at

para 24). Here, it is true that the RAD admitted that Mohinder or the Punjab police could theoretically find out about Mr. Singh Nijjar's IFA locations by virtue of his family or friends. However, the RAD found that neither Mr. Singh Nijjar's wife nor his mother testified having experienced harassment or intimidation. Furthermore, the RAD determined that, as per the new evidence, Mr. Singh Nijjar's persecutors constrained their search to two villages within Mr. Singh Nijjar's local district of Jalandhar. Finally, it found that the timing of the disappearance of Mr. Singh Nijjar's father was not enough to prove that either Mohinder or the Congress Party was the likely culprit.

[37] In addition, the statement made Mr. Singh Nijjar's co-worker in the second letter, to the effect that he was "threatened", remains generic with no particularities. It does not establish or demonstrate a threat to this affiant's life or safety.

[38] In light of the above, I find that the RAD's reasons on the lack of motivation from Mr. Singh Nijjar's agents of persecution are a transparent and intelligible justification for the Decision (*Vavilov* at paras 81, 136). At paragraph 102 of *Vavilov*, the Supreme Court held that the reviewing court "must be satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived'". In this matter, I can easily trace and follow the RAD's line of analysis of the situation faced by Mr. Singh Nijjar, and the Decision bears the hallmarks of reasonableness, which are justification, transparency, and intelligibility (*Vavilov* at para 99).

[39] The RAD's conclusions on the existence of an IFA are essentially factual and go to the very heart of its expertise in matters of immigration and refugee protection. It is well established

that the RAD takes advantage of the specialized knowledge of its members to assess evidence relating to facts that fall within its area of expertise. In such situations, the standard of reasonableness requires the Court to show great deference to the RAD's findings (*Mason* at paras 57, 73). In the same vein, the Minister rightly stressed that it is not the task of a reviewing court to reweigh the evidence on the record, or to reassess the decision maker's findings of fact and substitute its own (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). Rather, the Court must consider the reasons as a whole, together with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53), and limit itself to determining whether they are irrational or arbitrary. In this case, there are no such irrational or arbitrary conclusions.

[40] In sum, the Decision is based on an internally coherent reasoning that is both rational and logical. The RAD was entitled to determine that the new evidence was insufficient to establish that either Mohinder or the Punjab police would be motivated to pursue Mr. Singh Nijjar to the IFA locations. Consequently, the Decision was responsive to the evidence, and its findings regarding the IFA locations are defensible based on the facts and the law.

[41] On a final note, in his submissions, counsel for Mr. Singh Nijjar kept repeating that the RAD's analysis was "microscopic". I do not agree. As I discussed in *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 [*Adeleye*] and *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 [*Paulo*], an administrative decision maker's approach cannot be called "microscopic" (and result in a reviewing court's intervention) unless it clings to issues that are irrelevant or peripheral to the claim of the refugee claimant (*Adeleye* at para 30; *Paulo* at paras 59–61). Moreover, an analysis does not become "microscopic" or overzealous because it

happens to be exhaustive, focused, and comprehensive. Quite the contrary, such an approach reflects the rigour that applicants (and the courts) have the right to expect from an administrative decision maker's analysis. I would add that a decision maker must in fact demonstrate such rigour in order to satisfy the requirement for a "justified" decision established in *Vavilov*. An administrative decision maker's analysis only veers towards being "microscopic" when it delves into peripheral issues and examines contradictions that are insignificant or irrelevant to the purpose of the refugee claim. This is clearly not the situation here.

[42] In this case, the analysis conducted by the RAD in no way targeted contradictions or inconsistencies irrelevant, insignificant, or peripheral to Mr. Singh Nijjar's allegations. Quite the contrary, the factors found in the Decision concern specific events that went right to the essence of the allegations anchoring Mr. Singh Nijjar's refugee claim and his fear of persecution. The RAD's analysis focused precisely on the specific allegation made by Mr. Singh Nijjar that he could be tracked through his family and friends.

IV. Conclusion

[43] For the reasons set forth above, this application for judicial review is dismissed. I am satisfied that the RAD reasonably considered the evidence in concluding that Mr. Singh Nijjar had a viable IFA in Mumbai or Kolkata. There are no grounds for the Court to intervene.

[44] There are no questions of general importance to be certified.

JUDGMENT in IMM-9018-23

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”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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