

Federal Court



Cour fédérale

Date: 20241028

Docket: IMM-12966-23

Citation: 2024 FC 1708

Ottawa, Ontario, October 28, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

HAJUR SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Hajur Singh, the Applicant, seeks judicial review of the decision rendered by the Refugee Appeal Division [RAD] on September 20, 2023 [Decision]. The RAD confirmed the Refugee Protection Division [RPD]'s decision which determined Mr. Singh is excluded from refugee protection by virtue of Article 1F(b) of the of *United Nations Convention Relating to the*

Status of Refugees [Refugee Convention] and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] In brief, the RAD found the RPD did not err in concluding that there are serious reasons for considering that, prior to arriving in Canada, Mr. Singh committed a serious non-political crime, i.e., possession of heroin, and that exclusion clause Article 1F(b) of the Refugee Convention applied to him. The RAD, like the RPD, did not find credible Mr. Singh's allegation that he was targeted and framed by his political opponents, and preferred the evidentiary documents that confirmed his conviction for a drug-related offence.

[3] Before the Court, Mr. Singh argues that, by excluding him under Article 1F(b) of the Refugee Convention, the RAD erred in (1) concluding that the evidence supported his criminal conviction while ignoring both his statement that he was targeted because of his political opinion and the objective documentary evidence on country conditions; and (2) assessing his credibility. At the hearing before the Court, Mr. Singh confirmed he was abandoning a third argument he had raised in his Memorandum.

[4] The Minister of Citizenship and Immigration [Minister] responds that the Decision is reasonable, that the credibility findings are reasonable as well, and that Mr. Singh is simply expressing his disagreement with the Decision and asking the Court to reweigh the evidence.

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

II. Context

[6] In May 2019, Mr. Singh arrived in Canada and claimed refugee protection. Upon being interviewed, he initially confirmed having never been arrested, charged or convicted of any crime in any country, but later indicated having been arrested, charged with selling drugs, and detained. In support of his claim for protection, Mr. Singh essentially alleged that he was targeted by police in India because he refused to join a political party. In the amended narrative attached in his Basis of Claim form, Mr. Singh outlined, *inter alia*, that he was charged in a framed case and that he received a summons from the police in India in 2019, hence after his arrival in Canada. Before the RPD, Mr. Singh adduced documents, and during the RPD hearing, he testified to the fact that (1) he was charged with drug possession and spent three months in detention before being released on bail; (2) in February 2014, he was sentenced for a term of 10 years and fined; and (3) he appealed the conviction and was released in 2017 on bail and provided documents.

[7] The RPD addressed Mr. Singh's credibility issues and examined if the exclusion under Article 1F(b) of the Refuge Convention applied. In brief, the RPD (1) found there were reasons to doubt Mr. Singh's credibility regarding his allegations surrounding his arrest and conviction for possession of heroin in India; (2) doubted Mr. Singh's allegations that his conviction was the result of police misconduct driven by a political conspiracy against him; (3) made a negative credibility finding in light of Mr. Singh's evasive testimony regarding first, the summons he alleged having received in 2019 and his failure first to provide any follow-up in regards to a search in the Crime and Criminal Tracking Network and Systems [CCTNS] portal, and second, his failure to provide documents that would indicate his allegation of having been framed was

presented as part of the judicial process in India, despite having been provided with the opportunity to do so; (4) found, based on the documents before it, that Mr. Singh was arrested, charged, and convicted under section 21 of the Indian *Narcotics Drugs & Psychotropic Substances Act, 1985*, sentenced to imprisonment for a period of 10 years and fined 100,000 rupee for possessing two hundred grams of heroin; (5) found the offence would, in Canada, fall under the *Controlled Drugs and Substances Act*, subsection 5(1) trafficking in substance and subsection 5(2) possession for the purposes of trafficking, indictable, and liable to a maximum sentence of imprisonment for life; and (6) concluded that Mr. Singh had not rebutted the presumption that the crime is a serious offence.

[8] Accordingly, the RPD found Mr. Singh was excluded under Article 1(F)(b) of the Refugee Convention and section 98 of the Act.

[9] On appeal, the RAD found the determinative issue to be exclusion and found Mr. Singh excluded pursuant to Article 1F(b) of the Refugee Convention and section 98 of the Act.

[10] The RAD found (1) there were “serious reasons to consider” that Mr. Singh committed a non-political crime that is presumed to be serious; (2) the crime is non-political, and in this regard, the RAD found (a) police and court documents supported the credibility of the criminal accusations and behaviour against Mr. Singh while his broad conspiracy theories were not supported by credible and trustworthy evidence, and (b) country conditions evidence about police misconduct was considered by the RPD as well as information within the documentation which indicated that the police search and arrest were based on secret information, but this

available evidence of police misconduct was not sufficient to establish that police misconduct was the cause of Mr. Singh's arrest and conviction in addition to insufficient evidence of a corrupt judiciary; and (3) the presumption of seriousness was not rebutted in Mr. Singh's circumstances.

[11] This Decision is the subject of the application for judicial review.

III. Analysis

A. *Legal framework and standard of review*

[12] Pursuant to Article 1F(b) of the Refugee Convention and section 98 of the Act, a person with respect to whom there are serious reasons for considering that he or she has committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee is excluded from protection. The test for "serious reasons to consider" is lower than the standard of proof on a balance of probabilities that would apply in a civil proceeding, but is higher than mere suspicion (*Okolo v Canada (Citizenship and Immigration)*, 2021 FC 1100 at para 26 citing *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 at paras 101-102).

[13] Reasonableness is the presumptive standard of review of the merits of an administrative decision and, in light of the arguments raised by the parties, nothing warrants a departure from this presumption. The Court must thus determine if Mr. Singh has shown the RAD Decision to be unreasonable per the teachings of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Court must be satisfied that

the RAD's 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).

[14] Moreover, the Courts have stated that in conducting reasonableness review of decision, the Federal Court can interfere only where the decision-maker has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of the Court's role (*Doyle v Canada (Attorney General)*, 2021 FCA 237 at para 3; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55).

B. *The Decision is reasonable.*

[15] Before the Court, Mr. Singh essentially argues that the RAD erred in (1) concluding that the evidence supported his criminal conviction while ignoring the objective documentary evidence on country conditions that confirms as much; and (2) assessing his credibility.

[16] First, Mr. Singh submits that the objective documentary evidence corroborates his statement that the charges and conviction against him were politically based, considering his political opinion and the rampant corruption present throughout India, including in the context of the influence the police force and politicians have on the judiciary system. In his memorandum, Mr. Singh refers specifically to the US country report at Tab 2.1 of the National Documentation Package [NDP] for India, the Responses to Information Requests [FIR] at Tab 12.4 of the NDP and to the fact that the documents allegedly show the fact that he has never had any other charges

or FIRs against him. At the hearing, Mr. Singh referred to additional documents in the Certified Tribunal Record [CTR].

[17] Contrary to Mr. Singh's argument, the Court has confirmed that country conditions alone are insufficient to ground a refugee claim, which is what he is seeking (*Owochei v Canada (Citizenship and Immigration)*, 2012 FC 140 at para 51; *Tranca v Canada (Citizenship and Immigration)*, 2023 FC 527 at para 15 citing *Jean v Canada (Citizenship and Immigration)*, 2019 FC 242 at para 19). The case law Mr. Singh submitted to the Court does not establish otherwise. Mr. Singh has thus not convinced me that the available evidence of police misconduct in India is, in and of itself, sufficient to establish that police misconduct is the cause of his arrest and conviction, particularly in light of the RAD's credibility findings. Furthermore, as highlighted by the Minister, and discussed at the hearing, the trial judgment found in the CTR states that Mr. Singh has criminal precedents, contrary to his assertion.

[18] Second, I am satisfied it was open for the RAD to confirm that the police and court documents supported the credibility of the criminal accusations against Mr. Singh while Mr. Singh's broad conspiracy theories were not supported by credible and trustworthy evidence. The record does not show otherwise.

[19] Under the reasonableness standard of review, particulars set in when credibility findings are at play. As stated in *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at paragraph 11: "... the credibility finding is a question of fact that deserves deference and ought to be reviewed under the reasonableness standard". In addition, "[t]hese credibility issues are the

heartland of the RPD's jurisdiction and expertise (*Pepaj v Canada (Citizenship and Immigration)*, 2014 FC 938 at para 13), and have been described as lying within 'the heartland' of its jurisdiction (*Siad v Canada (Secretary of State)*, [1997] 1 FC 608 (FCA) at para 24; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 7, 8)" (*Lunda v Canada (Citizenship and Immigration)*, 2020 FC 704 at para 36). The assessment of an applicant's testimony and their credibility is owed deference (*Aldaher v Canada (Citizenship and Immigration)*, 2021 FC 1375 at para 23). Given the applicable standard of review and the deference owed to the RAD on credibility issues, as outlined above, Mr. Singh needed to put forth quite a strong case to overturn the RAD's decision. He has not succeeded in doing so.

[20] Mr. Singh has not convinced me that the RAD erred in confirming that he was not credible. I note, as the Minister has, that:

- 1) the documents adduced in evidence support the conviction while Mr. Singh, despite having been provided with the opportunity to do so by the RPD, failed to submit any documents that would support his version of events or likewise any documents that would indicate his version of events was presented to the Court in India;
- 2) the passage Mr. Singh cites at paragraph 19 of his memorandum does not indicate a conspiracy was raised as part of his trial, but simply that arguments were made that the prosecution's allegations were false;
- 3) a copy of the judgment in India, that Mr. Singh himself provided, contradicts his allegation and states that he had criminal antecedents – Mr. Singh has not addressed this; and

- 4) Mr. Singh did not explain to the RAD why or how the RPD would have erred in its conclusion on the issue of the lack of a summon, especially in view of the additional time that had been provided to him, by the RPD, precisely to query the CCTNS citizen portal where he could find information, and of the fact he did not alternatively provide representations on the efforts he made to obtain the summons.

[21] Rather than pointing to reviewable errors, Mr. Singh is asking the Court to reweigh the evidence in his favour to choose his version of events. However, as stated above, this is not the role of the Court on judicial review.

IV. Conclusion

[22] The RAD's assessment of the available evidence, and its conclusion on the lack of any corroborative evidence to support Mr. Singh's version of events has not been shown to be unreasonable. On the contrary, I am satisfied that the Decision is responsive to the evidence that was before the RAD and that the RAD's findings are logical, intelligible and consistent in relation to the relevant legal and factual constraints.

[23] Neither party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-12966-23

THIS COURT'S JUDGMENT is that:

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

“Martine St-Louis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12966-23

STYLE OF CAUSE: HAJUR SINGH v THE MINISTER OF CITIZENSHIP
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