

Federal Court



Cour fédérale

Date: 20241107

Docket: IMM-6827-23

Citation: 2024 FC 1775

Ottawa, Ontario, November 7, 2024

PRESENT: THE CHIEF JUSTICE

BETWEEN:

GAGANDEEP SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Mr. Singh, is a citizen of India and member of the Sikh community. In May 2023, the Refugee Appeal Division (the “**RAD**”) of the Immigration and Refugee Board of Canada (the “**Board**”) rejected his claim for refugee protection.

[2] Mr. Singh maintains that the RAD erred in rejecting his claim on the basis that he has an internal flight alternative (“**IFA**”) in Mumbai, India. Mr. Singh asserts that the RAD’s assessment of both parts of the established test for an IFA was unreasonable.

[3] For the reasons that follow, I disagree. Consequently, this Application will be dismissed.

II. Background

[4] In his application for refugee protection, Mr. Singh alleged a fear of persecution by the Punjab police. He claimed that Punjab police raided his home in September 2018 and sought information regarding his cousin, Charandeep Singh (“CS”), and his friend Joginder Singh (“JS”). The police alleged that these individuals were involved with Sikh militants. Mr. Singh maintained that he was interrogated and tortured after the police produced photos of him with CS and JS. He added that he was held in custody for two days, until his family paid a bribe. Prior to his release, Mr. Singh claimed that the police took his photos and fingerprints, and required him to sign blank papers.

[5] Mr. Singh further claimed that the police subsequently visited his home on multiple occasions to question him and take bribes from his family. He added that he was arrested a second time, in January 2019, and tortured after being shown videos of him with JS at a Sikh temple. Once again, his family secured his release after paying a bribe. That release was conditional upon him reporting back to the police monthly, to provide information regarding CS, JS and other militants.

[6] Mr. Singh then left Punjab and went to New Delhi. He alleges that he then learned that the police were searching for him and had detained and tortured his father as a result of his failure to report back to the police, in accordance with the terms of his conditional release.

[7] Mr. Singh stated that he fears that his life would be in danger if he were required to return to India.

[8] The Refugee Protection Division (“RPD”) of the Board rejected Mr. Singh’s application for refugee protection after finding that the determinative issue was the availability of an IFA in Mumbai. In brief, with respect to the first part of the IFA test, the RPD found that Mr. Singh would not be at risk of persecution, torture, death or cruel and unusual punishment in Mumbai. In reaching this conclusion, the RPD determined that Mr. Singh’s name had not likely been added to any police database, as he alleged. In any event, the RPD found Punjab police would not be able to locate Mr. Singh in Mumbai through the Tenant Verification System (“TVS”) or through the Crime and Criminal Tracking Network System (“CCTNS”), as he had claimed. With respect to the second part of the IFA test, the RPD concluded that Mr. Singh had failed to establish that it would be objectively unreasonable to expect him to live in Mumbai. Among other things, the RPD found that he would likely be able to find work there. It also found that there was no evidence that he would face significant obstacles in accessing health or other public services, or that he would face conditions that would jeopardize his life or safety.

[9] In the course of its decision, the RPD identified several credibility concerns with Mr. Singh’s evidence. Based on those concerns, it found that his second arrest and detention, in January 2019, likely did not occur as he had alleged. Nevertheless, it accepted as credible the core allegation that he had at least one encounter with the Punjab police.

III. The RAD's decision

[10] The RAD began its analysis by finding that the RPD had correctly drawn a negative credibility inference based on the inconsistencies in Mr. Singh's evidence with respect to his alleged arrest in January 2019. The RAD added that this undermined his credibility in general. However, it refrained from undertaking a determinative analysis of his credibility.

[11] With respect to the availability of an IFA in Mumbai, the RAD found that Mr. Singh failed to demonstrate that the Punjab police had either the motivation or the means to find him in Mumbai. The RAD also concluded that it would not be objectively unreasonable for him to live in that city, because he would likely be able to find work, secure adequate accommodation, practice his religion, and adequately communicate using his Hindi and English abilities. The RAD added that any hardship he might face in Mumbai would not jeopardize his life or his safety.

IV. Issues

[12] The sole issue on this application is whether the RAD's assessment of the availability of an IFA in Mumbai is unreasonable.

[13] In his Application for Leave and Judicial Review, Mr. Singh stated that he was denied procedural fairness by the RAD. He repeated that claim in his written submissions, where he stated that the RAD failed to observe the principles of procedural fairness and natural justice.

However, he did not make any written or oral submissions in furtherance of that claim.

Accordingly, it will not be addressed below.

V. Standard of Review

[14] The standard applicable to the Court’s review of the RAD’s decision is whether it is reasonable. In reviewing the reasonableness of a decision, the Court’s overall focus will be upon whether the decision is appropriately justified, transparent and intelligible: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 86 [**Vavilov**]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 59-60 [**Mason**]. In other words, the Court will consider whether it is able to understand the basis upon which the Decision was made and then determine whether it falls “within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law”: *Vavilov*, at para 86, quoting *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47.

[15] A decision which is appropriately justified, transparent and intelligible is one that reflects “an internally coherent and rational chain of analysis” and “is justified in relation to the facts and the law that constrain the decision maker”: *Vavilov*, at para 85; *Mason*, at paras 8 and 64–65. The decision should also reflect that the decision-maker “meaningfully grapple[d] with key issues or central arguments raised by the parties”: *Vavilov*, at para 128; *Mason*, at para 74.

VI. Analysis

A. *Was the RAD's assessment of the availability of an IFA in Mumbai unreasonable?*

(1) The test for an IFA

[16] The test for an IFA has two parts.

[17] For a person claiming to be a convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [**IRPA**], the first part of the test requires the Board to be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which an IFA exists: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589, at 593 [**Thirunavukkarasu**], quoting *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706, at 710 [**Rasaratnam**]. For a person claiming that they are in need of protection for a reason described in section 97 of the *IRPA*, the first part of the test requires the Board to be satisfied that the claimant would not be personally subjected to a danger described in paragraph 97(1)(a), or to a risk described in paragraph 97(1)(b): *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643, at para 11; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1151, at para 9. These two versions of the first part of the IFA test can be combined into a single formulation: the Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted, or personally subjected to a danger or a risk described in section 97, in the part of the country to which an IFA exists.

[18] The second prong of the IFA test requires the person in question to demonstrate that it would be objectively unreasonable for them to have to seek refuge in the IFA area, having regard to all of the circumstances, including their particular circumstances: *Thirunavukkarasu*, at 597, quoting *Rasaratnam*, at 711. In this regard, the threshold for objective unreasonableness is “very high” and “requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to [the potential IFA location]”: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164, at para 15. Such conditions must be established based on actual and concrete evidence. Conversely, it is not sufficient “for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there”: *Thirunavukkarasu*, at 598.

(2) The RAD’s analysis of the first part of the IFA test

[19] Mr. Singh maintains that the RAD erred in finding that the Punjab police had neither the motivation nor the means to locate and harm him in Mumbai.

[20] With respect to the issue of *motivation*, Mr. Singh underscores the fact that, when he was released from prison in January 2019, his release was conditional upon him reporting back to the police monthly to provide information regarding CS, JS and other militants. He asserts that this demonstrates the Punjab police’s ongoing interest in him. He maintains that it is reasonable to infer from this that they would be motivated to track him down in Mumbai.

[21] The RAD found that various inconsistencies in Mr. Singh's evidence undermined the credibility of his claim that he was arrested in January 2019, as well as his credibility in general. In addition, the RAD found that Mr. Singh's alleged arrests by the Punjab police were extrajudicial and done in furtherance of collecting bribes, rather than because the police thought he had committed a crime. It based this finding on, among other things, Mr. Singh's confirmation that (i) all of his interactions with the Punjab police involved the collection of a bribe; (ii) no warrant for his arrest was ever issued, (iii) no First Information Report ("FIR") was issued against him, (iv) the police notes that he alleged had been sent to his home did not bear any stamp and were not signed by a senior officer, and (v) he had not been brought before the nearest magistrate within 24 hours of his arrests, or provided with a lawyer, as is required by Indian law.

[22] Given the foregoing, it was reasonably open to the RAD to find that the Punjab police likely do not have the motivation to find him in Mumbai. This conclusion was appropriately justified, transparent and intelligible.

[23] The RAD's finding that the Punjab police would not likely have *the means* to find Mr. Singh in Mumbai were based on its rejection of his claims that he could be tracked down through the CCTNS, the TVS and the Aadhaar identity card system.

[24] With respect to the CCTNS, the RAD found that Mr. Singh had failed to establish that his name is likely in that database. It made that finding after noting that FIRs are the mandatory first step in the commencement of any criminal investigation, and that Mr. Singh testified that a FIR

had not been issued against him. The RAD also noted again that Mr. Singh confirmed that he had not been charged with any offence. In addition, the RAD noted that information in the National Documentation Package (“NDP”) stated that police communicate across state lines in India only in instances of major crimes. Finally, the RAD observed that there was no evidence to indicate that Mr. Singh might be a person of interest to the Punjab police.

[25] Turning to the TVS, the RAD noted that this system is a process to identify tenants who have engaged in criminal activity in the past or are absconding from other states. The RAD also referred to documentation stating that information about tenants is very limited and that police work in silos. In addition, the RAD observed that a Mumbai police commissioner had been quoted as stating that “it is impossible for the police to actually verify the identity of all those who rent property” and that “the police force is not equipped to personally go and check all new tenants.”

[26] With respect to the Aadhaar identity card system, the RAD cited information in the NDP stating that the police have no legal access to data in that system, and that this data is tightly controlled.

[27] The RAD’s findings with respect to the CCTNS, the TVS and the Aadhaar card system were all reasonably supported. In contrast, Mr. Singh’s claims were based largely on speculation about what Punjab police might be able to do, or could possibly do.

[28] I pause to note that this Court has reached a similar conclusion with respect to the reasonableness of the RAD's conclusions concerning these systems on numerous occasions: see e.g., *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1758 at paras 28-31; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 64 at paras 19-23; and *Sandhu v Canada (Citizenship and Immigration)*, 2024 FC 262 at paras 21-22.

[29] Having regard to all of the foregoing, I find that the RAD's rejection of Mr. Singh's claim that the Punjab police would have the means to track him down through the CCTNS, the TVS or the Aadhaar card system was not unreasonable. Once again, that conclusion was appropriately justified, transparent and intelligible.

[30] In summary, for the reasons set forth above, the RAD's findings that the Punjab police do not likely have the motivation or the means to track Mr. Singh down in Mumbai were not unreasonable. They were appropriately justified and fall well "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Vavilov*, at para 86.

(3) The RAD's analysis of the second part of the IFA test

[31] Mr. Singh maintains that the RAD erred in finding that it would not be unreasonable, in all of the circumstances, for him to relocate to Mumbai. Mr. Singh asserts that this finding was unreasonable because he would have to live in hiding there, without any family support. He further asserts that the RAD's findings were based on speculation.

[32] I disagree.

[33] The RAD began its assessment by correctly articulating the test applicable to the second part of the IFA analysis. It then found that, as a young, educated, healthy male with domestic and international work experience, Mr. Singh would be able to safely relocate and find work and accommodation in Mumbai. The RAD also found that he would be able to adequately communicate there using Hindi and his “above basic” level of English. In addition, the RAD determined that he would be able to practice his Sikh religion there, where over 900,000 Sikhs also live. Given all of the foregoing, the RAD concluded that any hardship or discrimination Mr. Singh might face in Mumbai would not jeopardize his life or safety.

[34] Having regard to the findings made by the RAD, its conclusion was not unreasonable. That conclusion reflects an internally coherent and rational chain of analysis.

[35] Mr. Singh bore the onus of demonstrating, with concrete evidence, the “existence of conditions which would jeopardize ... [his] life and safety” in travelling or relocating to Mumbai: see paragraph 18 above. The evidence he adduced fell well short of this. The RAD’s conclusion that he failed to meet this test falls well “within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law”: *Vavilov*, at para 86.

VII. Conclusion

[36] For the reasons set forth in parts VI.A.(2) and (3) above, the RAD's decision with respect to the availability of an IFA in Mumbai for Mr. Singh was not unreasonable. Consequently, this Application will be dismissed.

[37] I agree with the parties that the legal and factual matrix of this Application does not give rise to a serious question of general importance for certification.

JUDGMENT in IMM-6827-23

THIS COURT'S JUDGMENT is that:

1. This Application is dismissed.
2. The legal and factual matrix of this Application does not give rise to a serious question of general importance for certification.

"Paul S. Crampton"

Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6827-23

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