

Federal Court



Cour fédérale

**Date: 20210611**

**Docket: IMM-4512-20**

**Citation: 2021 FC 595**

**Ottawa, Ontario, June 11, 2021**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**PARAMJIT SINGH  
and BALWINDER KAUR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated August 26, 2020, which upheld the Refugee Protection Division [RPD] decision that the Applicants cannot be found to be Convention refugees or persons in need of protection, because they hold the key to their own personal safety upon return to India.

[2] As explained in more detail below, this application is dismissed, because I have considered the Applicants' arguments and find the Decision to be reasonable.

## II. **Background**

[3] The Applicants are a husband and wife, both citizens of India. The male Applicant is from a rural Sikh family in Punjab, India. His family owns farmland in a village. However, his family has a land dispute with their neighbour, the male Applicant's cousin, who is allegedly known to be a police informer and belongs to the Congress party.

[4] The male Applicant states that his cousin wants to buy this land and that the cousin and his "goons" have threatened him, because he refuses to sell. In December 2016, they beat him to the point that he sought medical treatment. The male Applicant reported this incident to the police, but they would not take the complaint. The cousin also threatened that, when the Congress party came into power in Punjab, he would teach the male Applicant a lesson for reporting him to the police. The Congress party did come into power in Punjab in March 2017. The police then started coming to the Applicants' home and falsely accused the male Applicant of helping militants.

[5] In June 2017, the male Applicant learned that a worker on the land had been beaten by the cousin and others. He went to the police, but the police arrested him for trying to make the complaint. The police again accused the male Applicant of supporting militants, informed him he was therefore required to report to the police every month, and advised him to sell the land to his cousin.

[6] The male Applicant then fled Punjab for New Delhi. The police began harassing the female Applicant, who remained in the village. In July 2017, she was detained by police and questioned about the male Applicant's association with militants. She was beaten and sexually abused during questioning. The Applicants subsequently fled India and arrived in Canada on December 30, 2017. They made their refugee claim on January 2, 2018, based on threats, mistreatment, and violence they had suffered as a result of the ongoing dispute in India.

[7] On September 11, 2019, the RPD issued its decision, rejecting the Applicants' refugee claim on the basis that it has no nexus to a Convention ground. While the RPD found their allegations credible, it concluded that any risk faced by the Applicants would be resolved by selling their land and thereby resolving the land dispute. The Applicants appealed to the RAD, but their appeal was dismissed on August 26, 2020, in the Decision that is the subject of this application for judicial review.

### III. **Refugee Appeal Division Decision**

[8] The RAD found that, while the Applicants were credible, they failed to establish a nexus to s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and that they could eliminate the risks they faced, if they were to sell their land.

[9] On the subject of nexus, the RAD concluded that the allegation that the Applicants were being targeted for their political opinion was refuted by the female Applicant's testimony, admitting this to be untrue. The RAD found that the allegations are a criminal matter, in relation to both the cousin and the police who were acting unlawfully.

[10] In relation to the Applicants' ability to avoid the risks they faced by selling the land, the RAD rejected their argument that the RPD erred in relying on jurisprudence to the effect that those who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options.

[11] The RAD also considered the Applicants' argument that the RPD erred by failing to assess the female Applicant's claim of gender-based persecution. The RAD assessed the objective evidence about gender-based discrimination and violence in India and concluded that it does not meet the threshold of persecution within the meaning of the Convention. The RAD found that the female Applicant's profile – a married woman with 12 years of education and financial means, who is not a member of a particular marginalized social group in India – did not put her at an elevated risk in India that would amount to gender-based persecution.

[12] The RAD therefore dismissed the appeal, confirming the RPD's decision that the Applicants were neither Convention refugees under s 96 of IRPA nor persons in need of protection under s 97 of IRPA.

#### IV. **Issue and Standard of Review**

[13] The arguments raised by the Applicants in challenging the Decision, as canvassed below, are subject to review on a standard of reasonableness. As such, the issue for the Court's determination is whether the Decision is reasonable.

V. **Analysis**

[14] The Applicants argue that the RAD erred in failing to analyse the Applicants' fear of persecution in India as related to more than a dispute over land. They emphasize that the male Applicant's cousin involved both the police and the Congress political party in supporting his position against the male Applicant. The Applicants refer the Court to the male Applicant's Basis of Claim [BOC] narrative, which explains that his cousin threatened that, once the Congress party came to power, he would teach the male Applicant a lesson. The Applicants also note the BOC's reference to the threat that the police would charge the male Applicant in "fake cases" and send him to jail. As such, the Applicants submit that there is a political element to their fear and the RAD erred in failing to find a nexus to a Convention ground.

[15] I find no reviewable error arising from this argument. The Decision demonstrates that the RAD clearly understood that the cousin had invoked his connections with the police and the Congress party to assist him in his land dispute with the male Applicant. The Decision expressly refers to the police doing the cousin's bidding and leveling false accusations against the male Applicant. However, the RAD concluded that these activities represented corruption, a criminal matter, not persecution based on the Applicants' political opinions. The RAD therefore found no nexus to a s 96 Convention ground. I find nothing unreasonable in this analysis.

[16] In connection with the s 97 analysis, the Applicants argue that the RAD erred by expecting them to sell the land to the cousin to avoid risk of harm, because the Applicants were dependent on the land to earn a basic income. The RAD relied on authorities to the effect that

those who are able to make reasonable choices to free themselves of a risk of harm must be expected to pursue those options (see *Malik v Canada (Citizenship and Immigration)*, 2019 FC 955 [*Malik*] at paras 25-30; *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 [*Sanchez*] at para 19). However, the Applicants submit that this principle does not apply where the choice would involve a deprivation of fundamental human rights, such as the right to earn a basic living (see *Malik* at para 30; *Sanchez* at para 19).

[17] I agree with the Applicants' characterization of the law. However, as the Respondent submits, the evidence does not support a conclusion that the Applicants were dependent on the land to earn a basic income. When asked at the hearing of this application to identify the evidence upon which the Applicants relied for this submission, their counsel referred to the female Applicant's testimony that they could not live anywhere else in India, because there was no means by which they could earn money there. Counsel also identified the male Applicant's testimony that acquiring the Applicants' land was valuable to his cousin because it would increase the value of his own contiguous land.

[18] This evidence does not support a conclusion that the Applicants are dependent on the land for a basic income. Also, the Respondent points to the male Applicant's testimony that he had worked as a truck driver for 13 to 14 years before beginning to work as a farmer on his family's land in 2010. Further, the male Applicant testified that his family owns land other than the land that is the subject of the dispute with the cousin, all of which is in his father's name. I find no error by the RAD in dismissing the Applicants' claim on the basis that it would be reasonable for them to sell the land to avoid harm.

[19] Having considered the Applicants' arguments, I find the Decision reasonable and must dismiss this application for judicial review. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-4512-20**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4512-20

**STYLE OF CAUSE:** PARAMJIT SINGH and BALWINDER KAUR v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE VIA TORONTO

**DATE OF HEARING:** JUNE 8, 2021

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** JUNE 11, 2021

**APPEARANCES:**

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