Federal Court  Cour fédérale

Date: 20210419

Docket: IMM-7850-19

Citation: 2021 FC 341

Ottawa, Ontario, April 19, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

AVTAR SINGH
MANPREET SINGH
HARJEET SINGH
SIMARPREET KAUR
RAJINDER KAUR
SIMRAN DIWAN
YUVRAJ SINGH
JASLEEN KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants are Manpreet Singh, his wife Simarpreet Kaur and their children Jasleen Kaur and Yuvraj Singh, Mr. Singh's brother Harjeet Singh and his wife Simran Diwan, and Mr.

Singh's parents Avtar Singh and Rajinder Kaur. They seek judicial review of a decision of the Refugee Appeal Division (RAD) dismissing an appeal of the Refugee Protection Division's (RPD) decision that the applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], as there are viable internal flight alternatives (IFAs) in Mumbai and Delhi.

[2] The applicants submit the RAD's decision is unreasonable. They also assert that they have a real and justifiable fear of being subjected to torture or inhumane or degrading treatment upon return to India, and that the RAD's decision violates sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the *Charter*], as well as article 3 of the UN *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* [*Convention Against Torture*].

[3] I find that the applicants have not established that the RAD's decision is unreasonable, and the applicants' *Charter* arguments are premature. Accordingly, I must dismiss this application.

II. **Background**

[4] The applicants are citizens of India from Ludhiana, Punjab. Manpreet Singh ran a company that distributed vaccines to doctors and pharmacies. His brother Harjeet was in charge of procurement and employee management. According to Manpreet Singh's basis of claim (BOC) narrative, the family's troubles began after he complained to police in February 2017

about a neighbour who ran a noisy factory near his house. The neighbour had ties to members of the Congress Party and the neighbour's uncle was the superintendent of police for their area.

[5] The applicants alleged that they received threats from the neighbour. Manpreet and Harjeet Singh were called to the police station where the neighbour and his uncle were present. The police said that there had been accusations that employees of the Singhs' company were selling injectable drugs to young people. The Singhs were allowed to leave the station on the condition that they not make complaints about the neighbour.

[6] According to the applicants, the threats from the neighbour did not stop but rather increased after the Congress Party was voted into power in the state of Punjab in March 2017. In May 2017, following a raid on the Singhs' business led by the neighbour's uncle, the applicants allege that Manpreet Singh and his brother were taken to the police station and subjected to torture, and Ms. Kaur was called to the station, where she was sexually abused, beaten, and questioned. Mr. Singh and his brother were released days later with the help of a member of the community and the payment of a bribe. In June 2017, the police asked Mr. Singh to report to the police station on two occasions. The next month two men who were presumed militants came to the business asking for an employee who had hidden weapons for them. In August, the police raided the business again, arresting Manpreet Singh and his sister-in-law, Ms. Diwan. Mr. Singh alleges he was detained, tortured, and questioned about the militants, while Ms. Diwan was beaten and sexually abused by the police.

[7] In September 2017, Manpreet Singh took his wife, their children, and Ms. Diwan to stay with relatives in Amritsar Kalan, in the state of Haryana. The relatives suggested that the family leave India, and Mr. Singh started working with an agent. He found out that the police had arrested his father on September 30, 2017 and beat him into disclosing the family's whereabouts in Haryana. However, Mr. Singh's mother warned them in time and they were able to move to Delhi with the agent. Mr. Singh's father was released on conditions, and given one month to produce his sons. Mr. Singh's father, mother, and brother joined the rest of the family in Delhi and made arrangements to leave India, which they did in March 2018.

[8] After arriving in Canada, the applicants claimed refugee protection. The RPD denied their claim and the applicants appealed to the RAD. On appeal, the applicants challenged the RPD's negative credibility finding regarding the allegation that the applicants are suspected of having ties to dangerous Sikh militants, and challenged the RPD's determination that the applicants have viable IFAs in Mumbai and Delhi.

[9] The RAD confirmed the RPD's credibility findings, holding there was insufficient credible evidence to suggest that the police truly suspected the applicants of having ties to dangerous Sikh militants. The RAD also confirmed the RPD's finding regarding the IFAs. The RAD found, on a balance of probabilities, that the police would not be motivated to track down the applicants should they relocate to Mumbai or Delhi. The RAD considered the applicants' arguments that relocating to the proposed IFAs would be unreasonable in their circumstances, and disagreed, finding that the IFAs were reasonable.

III. **Preliminary Issues**

[10] The proper name for the respondent is the Minister of Citizenship and Immigration, not the Minister of Immigration, Refugees and Citizenship Canada: *IRPA*, s. 4(1). The style of cause is amended accordingly.

[11] In place of a book of authorities, the applicants filed a list of authorities the evening before the hearing. As the respondent made no objection, I allowed the applicants to make submissions regarding the authorities in the list, and I have considered them in reaching my decision.

IV. **Issue and Standard of Review**

[12] The only issue on this application for judicial review is whether the RAD unreasonably found that the applicants have viable IFAs in Mumbai and Delhi. The applicants allege that the RAD's determinations with respect to both parts of the two-prong test for an IFA are unreasonable. Since the test is conjunctive, the application for judicial review can succeed if the RAD's decision is unreasonable with respect to either part of the test.

[13] The applicable standard of review is reasonableness, which is carried out according to the revised framework for reasonableness review set out in the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. See also: *Akinyemi-Oguntunde v Canada (Citizenship and Immigration)*, 2020 FC 666 at para 15; *Armando v Canada (Citizenship and Immigration)*, 2020 FC 94 at para 31; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 17.

[14] The applicants rely on *Multani v Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 for the proposition that a "constitutional standard of review" should apply to this Court's review of the *Charter* arguments raised. Since I find that the applicants' *Charter* arguments are premature, it is not necessary to address the applicable standard of review in respect of the *Charter* arguments.

V. **Analysis**

(1) *The Charter and international laws*

[15] As stated above, the applicants assert that they have a real and justifiable fear of being subjected to torture or inhumane or degrading treatment upon return to India, and that the RAD's decision violates sections 7 and 12 of the *Charter*, as well as article 3 of the UN *Convention Against Torture*. The applicants rely on *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1; *Abdulrahman v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 842 at para 26; *Sharif v Canada (Citizenship and Immigration)*, 2019 FC 346 at paras 20-21; and *Vilvarajah v Canada (Citizenship and Immigration)*, 2018 FC 349 at paras 11 and 18.

[16] The cases referred to by the applicants do not relate to the judicial review of a RAD's decision.

[17] The respondent argues that the question of whether the applicants' deportation would violate the *Charter* is premature at this stage. The respondent refers to several decisions of this Court to support this position, including: *Lozano Navarro v Canada (Citizenship and*

Immigration), 2011 FC 768 at para 38; *Udeagbala v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1507 at para 50; *Mihayo v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 18 at para 10; *Brar v Canada (Citizenship and Immigration)*, 2017 FC 820 at para 32; and *Kikina Biachi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 589 at para 22.

[18] I agree with the respondent. The applicants are not currently facing deportation, and their arguments that deportation would violate the *Charter* are premature.

(2) *The RAD's IFA analysis*

[19] The applicants allege the RAD's IFA analysis is unreasonable. They argue the RAD "misused" the finding of an IFA to determine that the applicants could return to a country where they have been victims of torture, and where there remains a risk of torture. They allege that their lives are at risk due to police corruption and impunity for police misconduct in India. The applicants submit the RAD's decision cannot be justified in light of *Vavilov*.

[20] First, the applicants maintain that it was unreasonable for the RAD to focus on the attitude of the police towards dangerous militants because their claim was not based on militancy. Their claim was based on the violent behaviour of the police working in support of powerful individuals, and they assert that the RAD misconstrued the basis for their claim, relying on *Singh v Canada (Citizenship and Immigration)*, 2006 FC 709 at para 11.

[21] Second, the applicants submit the RAD applied the wrong criteria to determine that Delhi and Mumbai are viable IFAs by focusing on the interest or motivation of the police in seeking the applicants in Mumbai or Delhi, rather than whether the state would protect them. The applicants argue that the RAD was required to consider whether they would have adequate state protection in the proposed IFAs, according to *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*] and under international law.

[22] Third, according to the applicants, the RAD's findings that Delhi and Mumbai are viable IFAs were based on speculation, and not supported by the evidence: *Salamat v Canada (Immigration Appeal Board)*, [1989] F.C.J. No. 213 (FCA): *Muresan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 819 at para 17; *Bansal v Canada (Citizenship and Immigration)*, 2020 FC 531 at para 10. They submit that the documentary evidence shows the police force in India to be powerful and effective, and they point to a document in the National Documentation Package (NDP) that describes police capability to monitor all phone and Internet communication in the country, the existence of a national police database, widespread surveillance by the police, and a tenant database used for detailed surveillance of individuals in India. Furthermore, the applicants submit that a viable IFA simply does not exist when state actors are the agent of persecution, relying on *Rasaratnam v Canada (Minister of Employment and Immigration)* (CA), [1992] 1 FC 706 and the UN High Commissioner for Refugees Guidelines on IFA (July 2003).

[23] In support of the third point, the applicants also argue that the situation in Punjab was considered in *Shahi v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 9048 (FC) [*Shahi*], and at paragraphs 25 to 26 the Court found that evidence demonstrating innocence is irrelevant when an applicant's fear of police originates from the police's unjust and incorrect suspicion that the applicant is a Sikh terrorist. The applicants in this case state they are innocent and do not have connections with militant groups, but allege they are the victims of false allegations by a man whose uncle is a prominent police officer in their area, and it is impossible for them to receive protection in such circumstances. The applicants assert that police torture is still rampant, and that suspected militants and their families or sympathisers are at grave risk. They submit that those who attempt to obtain justice against the police are subjected to threats, intimidation, and violence, relying on *Kaur v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1491 [*Kaur*] at paragraphs 28-30, and the objective situation in India is that the state is unable to protect its citizens. Similarly, the applicants rely on *Chahal v United Kingdom (Application 22414/93)*, (1996) 23 EHRR 413, (1996) Times, 28 November, [1996] ECHR 22414/93 [*Chahal*], a decision by the European Court of Human Rights. The applicants submit the *Chahal* decision outlines the danger of return of a Sikh man to India in late 1996.

[24] Fourth, the applicants argue that the RAD's decision effectively asks the applicants to go into hiding, including by not using their phones or the Internet to avoid discovery. A person who must hide from their persecutors does not have an IFA: *Sabaratnam v Canada (Minister of Employment & Immigration)*, 1992 CarswellNat 1182, [1992] FCJ No. 901 (FCA); *Ehondor v Canada (Citizenship and Immigration)*, 2017 FC 1143 at para 19. Also, the applicants submit that claimants should not be required to suppress their political or religious views or other

protected characteristics to avoid persecution in the IFA under the *Guidelines on International Protection No. 4:* "Internal Flight or Relocation Alternative" within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (HCR/GIP/03/04).

[25] I am not persuaded that the RAD's decision is unreasonable, as the applicants have not established any errors in the RAD's IFA analysis.

[26] As the respondent correctly submits, the question of whether an IFA exists is a factual one, and once an IFA location is proposed, the onus is on the applicants to show that it is not safe, or that it would be unreasonable in all of the circumstances for the applicants to relocate there: *Thirunavukkarasu.* As part of that onus, the applicants are required to establish an inability or unwillingness to avail themselves of state protection. A state is presumed capable of protecting its citizens in the absence of evidence to the contrary: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689.

[27] In my view, the RAD properly addressed the RPD's alleged errors regarding the IFAs, as raised by the applicants.

[28] I disagree that the RAD focused unreasonably on whether the applicants are truly suspected of having ties with dangerous militants. The RAD's reasons must be read in light of the history and context of the proceedings in which they were rendered, including the submissions of the parties and how the applicants framed their appeal: *Vavilov* at para 94;

Kanawati v Canada (Citizenship and Immigration), 2020 FC 12 at para 23. The RAD analyzed the issue of suspected ties with militants because it was an issue the applicants had raised. Indeed, the RAD's reasons specifically refer to the applicants' allegation that the RPD erred in finding that the police did not suspect the applicants of having ties with dangerous militants.

[29] The RAD found that the applicants provided inconsistent evidence on what motivated the police to bring them into custody. Ultimately, the RAD reasonably concluded there was insufficient credible evidence to suggest that the police had any real suspicion that the applicants were involved in Sikh militancy or that the police had a serious interest in pursuing the applicants as dangerous militants. This was relevant to whether the applicants would be safe from persecution in one of the proposed IFAs.

[30] The applicants had also argued before the RAD that the RPD found them to be generally credible. The RAD addressed this argument as well, finding there was no indication that the RPD found the applicants generally credible. The RAD pointed out that it was not necessary for the RPD to determine whether the applicants had a well founded fear of persecution in their home area before considering an IFA: *Kanagaratnam v Canada (Minister of Employment and Immigration)* (1996), [1996] FCJ No. 75, 36 Imm. L.R. (2d) 180 (FCA).

[31] The RAD disagreed with the applicants that the RPD erred by selectively considering sources in the NDP that described the ability of police to track people, and by failing to take into account the totality of the evidence. The RAD held that the fact the police have many ways of pursuing a wanted person across the country was not relevant to the facts at hand because there

was insufficient credible evidence that the applicants' names would appear on a list of wanted persons. This finding was reasonably open to the RAD. Documentary evidence may be insufficient to substantiate a refugee claim if the applicants do not establish a connection between the evidence and the applicants' specific situation: *Baradji v Canada (Citizenship and Immigration)*, 2017 FC 589 at para 25; *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89, [2002] 3 FC 537 at para 29; *Samuels v Canada (Citizenship and Immigration)*, 2011 FC 366 at paras 27-28.

[32] The cases that the applicant relies on are not persuasive. In *Shahi*, which related to an application based on humanitarian and compassionate grounds and not a RAD decision, the Court found that the officer erred in assessing the applicant's evidence that he could reasonably expect unusual, undeserved or disproportionate hardship in India due to the police's incorrect suspicion of his involvement with Sikh militants. The applicants in this case have not established an error in the RAD's assessment of the evidence, and furthermore, the RAD found that the police do not truly suspect the applicants to be involved in Sikh militancy. The applicants' reliance on the *Kaur* and *Chahal* decisions is also misplaced. The RAD cannot be faulted for failing to consider facts that were before a different tribunal, in cases that were decided 16 and 25 years ago. To succeed on this application, the applicants must establish that the RAD committed a reviewable error based on the evidence in their case, and they have not done so. Also, it appears that the applicants did not raise any issue of retaliatory threats against those who seek justice against the police in their appeal to the RAD.

[33] The applicants have not established any reviewable error in the RAD's analysis of the second prong of the IFA analysis, that is, whether it would be reasonable for the applicants to relocate to Mumbai or Delhi in the circumstances. The threshold on this second prong of the IFA test requires actual and concrete evidence of conditions that would jeopardize the applicants' lives and safety in travelling or relocating to the IFA: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA) at para 15. On appeal before the RAD, the applicants did not raise the argument that the IFA locations were unreasonable because they would be required to suppress their political or religious views. Rather, the applicants had argued that the RPD ignored the difficulty in becoming established, and engaged in a selective review of the country documentation concerning the situation of Sikhs in other parts of India. The RAD addressed the issue that was raised, noting that the applicants are educated, have experience travelling outside of India, and they had lived in New Delhi for four months prior to their departure from India.

[34] In summary, it was open to the RAD to conclude that the applicants failed to demonstrate that Mumbai and Delhi were not viable IFAs: *Thirunavukkarasu*.

VI. **Conclusion**

[35] The applicants have not established that the RAD's decision was unreasonable. Accordingly, this application for judicial review is dismissed.

[36] The parties have not proposed a question for certification. No such question arises in this case.

JUDGMENT in IMM-7850-19

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to reflect the Minister of Citizenship and Immigration as the proper name for the respondent;
2. This application for judicial review is dismissed;
3. There is no question for certification.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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