

Federal Court



Cour fédérale

Date: 20220617

Docket: IMM-5869-21

Citation: 2022 FC 925

Ottawa, Ontario, June 17, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

GURWINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Gurwinder Singh, is a citizen of Italy and seeks judicial review of a decision of the Refugee Appeal Division [RAD] dated August 12, 2021, which upheld the decision of the Refugee Protection Division [RPD] dated March 2, 2021, denying his claim for refugee protection on account of the fact that he had not exhausted his recourse to state

protection. I see nothing unreasonable with the RAD's decision, and for the reasons set out below, I dismiss the present application.

II. Background and underlying decisions

[2] Mr. Singh was born in India in 1994 to a wealthy Sikh family. His father died just before he was born – his mother allegedly conspired to have his father killed to get hold of his assets. His father's assets, which included various valuable properties, devolved to Mr. Singh at birth. Mr. Singh's mother abandoned him, remarried and had two other children. Mr. Singh lived with his paternal grandparents until his paternal uncle and his wife, who are both Italian citizens, adopted him in February 2003. His adoptive parents brought him to Italy in March 2005, when he was 10 years old. He became an Italian citizen in April 2006, at which point he lost his Indian citizenship.

[3] Mr. Singh was discriminated against and abused by his adoptive family; they beat him and used him as a servant. In May 2014, when Mr. Singh was 19 years old, his adoptive parents took him to India on the pretence that he was to visit his grandparents, but in reality, the purpose was to force Mr. Singh to sign his properties over to his adoptive father and to coerce him into an arranged marriage with the niece of his adoptive mother. When Mr. Singh refused to sign over his father's estate or to go through with the marriage, his adoptive father beat and detained him with his grandparents. At some point, Mr. Singh did sign over his father's estate; however, he continued to be detained by his adoptive father pending his wedding – Mr. Singh also claims that he was detained and tortured by the police in India, with the complicity of his mother and her

new husband. In any event, prior to the wedding ceremony, Mr. Singh managed to escape with his passport and returned to Italy, where he hid at his friend's residence in Rome.

[4] On June 10, 2014, while Mr. Singh was out running errands, his adoptive father, Jaspreet Singh (the brother of the woman he was supposed to marry in India), and other individuals purportedly raided his friend's residence; the men beat and stabbed his friend [the June 2014 incident]. When Mr. Singh returned to his friend's home, the police and an ambulance crew were assisting his friend. During the hearing before the RPD, Mr. Singh testified that he then approached a police officer to tell him that his relatives were responsible for the attack, however the officer apparently told him that since he had not been a witness to the attack, he could not establish who had carried it out. Mr. Singh did not file any formal complaint against his family, but rather, following his friend's advise, he left for Canada on June 19, 2014, in order to live with his aunt. Mr. Singh claims that while he was in Canada, his grandfather in India was murdered by his adoptive father in January 2015 in order to acquire his assets, and that his biological mother and her husband detained his grandmother in India in December 2017; he does not know if his grandmother is still alive today.

[5] Mr. Singh did not claim refugee protection until January 2018, nearly four years after first arriving in Canada; he claims that he waited before doing so as he had tried to first regularize his status by obtaining an extension to his visitor visa and a work permit through an agent, but to no avail. Before the RPD, Mr. Singh asserted that he fears his relatives, specifically his adoptive father and Jaspreet Singh, and he fears for his life should he have to return to Italy. The RPD found no nexus to any of the Convention grounds as his allegations only demonstrated

a fear of criminality. In short, the determinative issue for the RPD was the availability of state protection.

[6] The RPD determined that Italy, a G7 country and a founding member of the European Union, is a highly democratic country with a professional and politically independent police service offering effective state protection to its citizens. According to the RPD, the news article that Mr. Singh provided as evidence to demonstrate that Jaspreet Singh was arrested for attempted murder in 2018 and to establish his involvement in crime was evidence of the Italian police actually protecting its citizens from organized crime. The RPD determined that Mr. Singh's single engagement with the Italian police following the June 2014 incident did not constitute sufficient efforts to avail himself of the protection of his own state, nor did it establish that Italy would be unable to protect him.

[7] Before the RAD, Mr. Singh submitted new evidence consisting of five news articles about the police in Italy, which predated the RPD's decision. The RAD did not admit the evidence as Mr. Singh did not establish that the articles were not reasonably available at the time of the decision or that he could not reasonably have been expected in the circumstances to present them to the RPD before the decision was rendered, pursuant to subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[8] Mr. Singh argued before the RAD that he did exhaust his recourse to state protection and that the RPD failed to consider his mental state; his other arguments regarding the issues of credibility, speculative evidence, and the absence of an opportunity to respond to the RPD's

concerns were considered by the RAD as not relevant or as unspecific. The RAD noted that Mr. Singh did not contest the finding of the RPD that Italy was a highly democratic country with a “professional and politically independent police service” and found that the RPD had correctly concluded that Mr. Singh had not exhausted his recourse to state protection and that adequate protection exists in Italy. The RAD rejected Mr. Singh’s argument that speaking to the police on the night of the June 2014 incident was sufficient to exhaust state protection, and it agreed with the RPD that this was insufficient to rebut the presumption of state protection in a democratic country like Italy; there was nothing stopping Mr. Singh from filing a formal complaint or trying to contact the police again.

[9] The RAD further rejected Mr. Singh’s argument that the RPD had failed to consider his mental state on account of his mother having abandoned him, his father having been killed and the fact that he was abused by his relatives. The RAD found that the RPD had acknowledged Mr. Singh’s difficult life; however, since there was no evidence relating to any psychological or mental health issues on record, there was nothing to suggest that Mr. Singh was unable to access state protection.

III. Issue and standard of review

[10] There is consensus that reasonableness is the applicable standard of review and that the sole issue in this application for judicial review is whether the RAD’s decision is reasonable. None of the exceptions to the presumptive standard of reasonableness apply in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [Vavilov]). To determine whether the decision as a whole is reasonable, the reviewing court must ask “whether

the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at paras 99-101).

IV. Analysis

[11] The determinative issue before the RAD and the RPD was the availability of state protection. However, Mr. Singh provided lengthy written submissions about his well-founded fear of persecution based on what he calls political opinion for initially refusing to transfer the properties to his adoptive father and to go through with an arranged marriage. How this relates to political opinion is not clear; however, this argument was not made before the RAD, and as Mr. Singh had not challenged before the RAD the finding of the RPD that there was no nexus to the Convention, it is not for this Court to consider new arguments that could have been raised before the RAD but that were not (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 23).

[12] Before me, Mr. Singh made the same argument that he made before the RAD, *to wit*, that his attempt to advise the police officer that his relatives were responsible for the June 2014 incident was sufficient to exhaust his recourse to state protection given the psychological and emotional trauma that he had experienced throughout his life. I cannot agree. First, as conceded before me by Mr. Singh, there is no evidence in the record of any mental health issues. In addition, as the Supreme Court of Canada stated in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*]: refugee protection is “meant to come into play only in situations when that protection is unavailable” and “[t]he international community intended that persecuted

individuals be required to approach their home state for protection before the responsibility of other states becomes engaged.” (*Ward* at p 709). The burden to rebut the presumption of state protection lies with the applicant (*Ward* at p 726; *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paras 25, 38 [*Flores*]). Furthermore, “the more democratic the state’s institutions, the more the claimant must have done to exhaust all the courses of action open to him or her” (*Flores* at para 32, citing *Canada (Citizenship and Immigration) v Kadenko*, 1996 CanLII 3981 (FCA)).

[13] As I mentioned to Mr. Singh’s counsel during the hearing, the fact that the evidence establishes that Jaspreet Singh may be a criminal is beside the point. There is a strong presumption in favour of state protection in a country like Italy. I find nothing unreasonable with the RAD’s finding that the single engagement with the police following the June 2014 incident, without anything further, did not establish that Mr. Singh had exhausted his recourse to state protection. Moreover, Mr. Singh’s subjective perception that protection would not be forthcoming would not constitute compelling or persuasive evidence unless police protection had previously failed him on multiple occasions, which is not the case here (*Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 51).

V. Conclusion

[14] I would dismiss the application for judicial review.

JUDGMENT in IMM-5869-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Peter G. Pamel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5869-21

STYLE OF CAUSE: GURWINDER SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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