

Federal Court



Cour fédérale

**Date: 20230104**

**Docket: IMM-8258-21**

**Citation: 2023 FC 6**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, January 4, 2023**

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

**BETWEEN:**

**NIRBHAI SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Nirbhai Singh, is a citizen of India. He alleges fearing a wealthy man, who wants to harm him with the help of the police, to restore his family's honour. He fled India in June 2019 and claimed refugee protection in Canada.

[2] On April 6, 2021, the Refugee Protection Division [RPD] rejected the applicant's refugee protection claim. The RPD concluded that the applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Although the RPD found the applicant's allegations credible, it concluded that he had internal flight alternatives [IFAs] in the cities of Delhi or Faridabad. The RAD found that the applicant had not shown that his agents of persecution had the motivation to pursue him outside the state of Punjab.

[3] The applicant appealed this decision to the Refugee Appeal Division [RAD], and his appeal was dismissed on October 15, 2021 [Decision]. Despite the numerous arguments raised by the applicant on appeal, the RAD considered the determinative issue to be the RPD's conclusions regarding a viable IFA in Delhi or Faridabad. According to the RAD, the RPD did not err in this regard.

[4] This application requires the Court to determine whether it was reasonable for the RAD to dismiss the applicant's appeal.

[5] For the following reasons, I find that the Decision is reasonable. Accordingly, the application for judicial review is dismissed.

#### I. Facts

[6] The applicant made the following allegations, stated in more detail in his Basis of Claim [BOC] Form and in his testimony before the RPD.

[7] Since his brother-in-law died in June 2016, the applicant had been helping out his sister and nephew, who lived in the village of Daudpur, Punjab, while the applicant lived in the town of Mazara.

[8] His nephew began seeing the daughter of a rich and important man in Daudpur. That man was fiercely opposed to their romantic relationship and attempted to end it by falsely accusing the nephew of being a Sikh militant.

[9] In November 2018, the nephew was imprisoned. After he was released in January 2019, the nephew was arrested again and tortured.

[10] The applicant acted as a guarantor for his nephew to ensure that he stayed away from the girl, but in March 2019 the nephew disappeared.

[11] In May 2019, the applicant was arrested, detained and tortured by police, who suspected him of having information about his nephew's activities. He was released because the village council intervened and a bribe was paid. He then went into hiding in Delhi.

[12] On June 6, 2019, the applicant left his country for Canada. His spouse and two children have stayed in India, and the wealthy man's henchmen continue to visit them.

II. The RPD's decision

[13] As noted above, the RPD rejected the applicant's claim for refugee protection. In its decision, the RPD analyzed the claim pursuant to section 96 and subsection 97(1) of the IRPA and identified the availability of an IFA as the determinative issue. In applying the two-pronged test for an IFA set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (FCA) [*Rasaratnam*], the RPD concluded that Delhi and Faridabad were viable IFAs.

[14] The RPD accepted that the applicant had acted as a guarantor for his nephew and that he had been arrested and tortured in May 2019 because of problems his nephew had had with police. The applicant's account was corroborated by his late brother-in-law's death certificate, the First Information Report [FIR], an affidavit from a Sarpanch (local council president) and a medical report from the hospital where he was treated after being tortured. The RPD consulted several newspaper articles filed by the applicant on the capacities of India's police forces. However, it did not accept the articles that were unrelated to the proposed IFAs, that came from unreliable sources or that were too vague.

[15] With respect to the first prong of the *Rasaratnam* test, the RPD concluded that the applicant did not show that the agents of persecution had the motivation to search for him in the proposed IFAs even though the wealthy man's henchmen continued to harass his family and the police visited his family's home in November 2020 and January 2021. The RPD was not

persuaded that the police would be sufficiently motivated by money, as alleged by the applicant, to search for him outside Punjab in the proposed IFAs.

[16] The RPD noted that the applicant had been able to leave the country without issue using his passport. It deduced from this that the applicant's name was not in a police database and that there was no warrant issued for his arrest. It therefore rejected the applicant's allegation that he had bypassed the usual airport security procedures with the help of an agent.

[17] Regarding the capacity of the agents of persecution, the RPD noted that the articles filed by the applicant showed that the police had the means to pursue individuals using police databases and that the tenant verification system had been improved in recent years. However, according to the RPD, that evidence did not demonstrate the effectiveness of information sharing between the police forces of different states.

[18] The RPD concluded that the applicant did not fit the profile of a person likely to be of interest to the police because he had not committed a serious crime. In addition, the police did not have the resources needed to conduct tenant verifications. In the end, the RPD found that the objective evidence showed that the police did not have the capacity to pursue the applicant in Delhi or Faridabad.

[19] The RPD did not accept the applicant's claim that the police could find him when he returned to the country and had to quarantine for 15 days because of COVID-19. According to the RPD, there was no evidence that the police used quarantine to track criminals.

[20] Under the second prong of the test, the RPD noted that the applicant had several years' experience as a mechanical fitter. The RPD rejected his allegation that he could not live in the IFAs because he did not speak the language of the majority, since the objective evidence showed that the IFAs were located in regions where Punjabi was a commonly used language.

### III. Impugned decision

[21] The applicant appealed the RPD's decision to the RAD. After a full and independent analysis of the evidence submitted, the RAD considered, just like the RPD, that the applicant had failed to demonstrate that he did not have an IFA in Delhi or Faridabad.

[22] The RAD's determinative conclusions regarding the first prong of the *Rasaratnam* test are as follows:

[26] Lastly, I note that the RPD considered the appellant's testimony that the police and his agent of persecution cannot locate him, but that the police can. The RPD considered all of the documentary evidence regarding the verification of tenant information by the police, the CCTNS and how the Indian police operates, and it concluded that the appellant did not demonstrate an ability to locate individuals outside of Punjab. I do not see any errors in the RPD's analysis and after conducting my own, I agree with its conclusions that the police still have a limited ability to track criminals who are registered in criminal databases and that they have insufficient resources to conduct tenant verifications throughout India.

[27] In this context, considering the analysis of the motivation of the police and his agent of persecution to locate him anywhere in India and the appellant's particular circumstances, I am of the opinion that the appellant did not demonstrate that the Punjab police would expend its energy and coordinate its efforts with police in other states to try to find him in Delhi, a megalopolis with 16,753,235 inhabitants, or in Faridabad, or that it would have the ability to do so.

[23] With respect to the second prong, the RAD confirmed that the proposed IFAs were reasonable. The RAD took into consideration the applicant's many years of professional experience in the mechanical field in India, Germany and Ghana and concluded that he should be able to find a job. In addition, it noted that the two cities identified were located in two of the main regions of India where Punjabi was spoken.

[24] Finally, the RAD concluded that the RPD had provided sufficient reasons for its decision. According to the RAD, once the RPD identified the availability of an IFA as the determinative issue, it was not obliged to analyze the protection provided to citizens experiencing such difficulties.

#### IV. Issues and standard of review

[25] The applicant puts forward several arguments, all of which amount to one actual issue: is the RAD's decision reasonable?

[26] The standard of review in this case is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

#### V. Analysis

[27] According to the applicant, the RAD erred in its analysis of the first prong of the *Rasaratnam* test. He submits that, since the RPD found him to be credible, there was no reason

for the RAD to doubt his allegations regarding the possibility of persecution by the police, given that they had already persecuted him. However, I find no inconsistencies in the RAD's reasons.

[28] The issue before the RAD was not whether the applicant was credible but whether a viable IFA was available. As Justice Peter Pamel recently noted in *Kumar v Canada (Citizenship and Immigration)*, 2022 FC 1059 at paragraph 13: [TRANSLATION] “The RAD may both acknowledge a claimant’s fear of agents of persecution and find that an IFA is available”.

[29] It should first be noted that the IFA is inherent in the definition of a refugee. International protection is only provided if the refugee protection claimant’s country of citizenship cannot ensure adequate protection anywhere in the country. It is settled law that, in matters of IFAs, the burden of proof is on the claimant.

[30] The applicant had to establish that he faced a serious possibility of persecution in the proposed IFAs. To rebut the viability of a proposed IFA, the claimant must persuade the RAD, on a balance of probabilities, that (1) the claimant will be subject to persecution on a “serious possibility” standard, or a section 97 danger or risk on a “more likely than not” standard in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would be unreasonable for the claimant to seek refuge there. Both of these prongs must be satisfied to conclude that a refugee protection claimant does not have a viable IFA.



[31] In this case, it was reasonable for the RAD to conclude that the wealthy individual, his henchmen and the police have neither the interest nor the capacity to track the applicant throughout India for the following reasons.

[32] The applicant did not provide evidence that would establish that the agents of persecution identified intended to pursue him outside Punjab, where he lived with his family. Indeed, he was able to leave the country without incident on his passport, which he would not have been able to do had he been on a list of wanted criminals or subject to an arrest warrant or an FIR. Only his nephew was subject to such a measure. The applicant can therefore return to India the same way he left it without being intercepted.

[33] Additionally, and even though it is not necessary given the conclusion regarding intent, the applicant never identified any evidence that had been ignored by the RPD or the RAD with regard to his persecutors' capacity to track him. Instead, he attempted to question the RPD's and the RAD's assessment of the evidence regarding the police. Their assessment of the evidence cannot be found unreasonable without further arguments or evidence that would make it possible to draw conclusions about the RPD's and the RAD's evaluation of the capacity of the police to locate him in the proposed IFAs.

[34] With respect to the second prong of the test, the RAD noted that the applicant submitted no arguments to indicate how the RPD had erred in its analysis of the second prong, namely, the reasonableness of the IFAs. After its own analysis, the RAD found that the RPD's conclusion was correct.

[35] In this case, it was reasonable to conclude that the applicant could settle in the proposed IFAs given his personal circumstances for the following reasons.

[36] The applicant did not provide any new evidence or new arguments establishing that it would be impossible for him to work or, more generally, to provide for his needs in the proposed IFAs. Whether on the basis of his professional experience in India and abroad or on that of his language, which is spoken in the two proposed regions, relocating to one of the IFAs clearly does not put the applicant's life at risk. Even if he had provided persuasive evidence in that respect, difficulty finding work would not make an IFA unreasonable.

[37] The applicant put forward no specific arguments or contradicting documentary evidence that could raise a doubt regarding the RAD's assessment of the IFA. With respect, his arguments are terse and flawed.

[38] In order to provide a complete judgment, I will respond to three more arguments raised by the applicant, which are not determinative and regarding which the respondent did not make submissions.

[39] First, the applicant submits that the RAD breached the principles of procedural fairness by relying on its specialized knowledge [TRANSLATION] "to conclude that the arrest, torture and insults that the applicant claims to have experienced are not a certainty without giving him the opportunity to respond to that opinion under the Tribunal's rules".

[40] However, the applicant did not specify where in its decision the RAD drew this conclusion. Indeed, the RAD did not cast any doubt on the RPD's finding that the applicant's account was credible and that he had been arrested and tortured because of his nephew's love affair. The determinative issue identified by the RAD and communicated to the applicant was whether an IFA was available. The applicant was given the opportunity to make submissions on this issue. Therefore, procedural fairness was observed.

[41] Second, the applicant claims that the RAD did not provide separate reasons for concluding that he would not face a risk to his life or a risk of cruel and unusual treatment or punishment were he to return to India. However, in identifying an IFA, it was implied that the applicant could return to one of the proposed IFAs in India without a serious possibility of being exposed to a risk to his life or a risk of cruel and unusual punishment.

[42] Lastly, the applicant submits that the RAD's decision is unreasonable because it failed to analyze the issue of state protection. However, the RAD's decision is based on the availability of an IFA regardless of any state protection. That conclusion alone is sufficient to deny the applicant refugee protection: *Garcia Guevara v Canada (Citizenship and Immigration)*, 2012 FC 195 at paragraph 2; *Kahuure v Canada (Citizenship and Immigration)*, 2015 FC 1087 at paragraph 39; *Adams v Canada (Citizenship and Immigration)*, 2018 FC 524 at paragraph 35.

## VI. Conclusion

[43] The applicant has not established that the RAD's decision is unreasonable with regard to the availability of an IFA. He tried to shift the burden of proof onto the Panel in order to mitigate

his failure to discharge his own burden. As the Federal Court of Appeal decided in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164, at para 11, “[a] failure by a claimant to fulfill his obligations and assume his burden of proof cannot be imputed to the Board so as to make it a Board’s failure.”

[44] In light of the above, the Court’s intervention is unwarranted. The RAD’s decision is reasonable. It meets the requirements of justification, transparency and intelligibility.

[45] The application for judicial review is therefore dismissed.

[46] Neither party has proposed a question for certification.

**JUDGMENT IN IMM-8258-21**

**THE COURT’S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. No question is certified.

“Roger R. Lafrenière”

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Judge

Certified true translation  
Margarita Gorbounova

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

**DOCKET:** IMM-8258-21

**STYLE OF CAUSE:** NIRBHAI SINGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VIA VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 1, 2022

**JUDGMENT AND REASONS:** LAFRENIÈRE J.

**DATED:** JANUARY 4, 2023

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