

Federal Court



Cour fédérale

**Date: 20230117**

**Docket: IMM-9752-21**

**Citation: 2023 FC 64**

**Ottawa, Ontario, January 17, 2023**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**UNKNOWN SURJEET SINGH  
(AKA SURJEET SINGH)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, a citizen of India, seeks judicial review of a December 13, 2021 decision of the Refugee Appeal Division (RAD) confirming the refusal of his refugee claim by the Refugee Protection Division (RPD). The RPD and the RAD found that the Applicant has a viable internal flight alternative (IFA) in Bengaluru (also known as Bangalore). Accordingly, the RAD concluded that he is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow, this application for judicial review is dismissed. The RAD assessed the Applicant's evidence and submissions against the accepted test for a viable IFA. The RAD also justified its conclusions regarding the motivation and means of the Applicant's agents of persecution to pursue him in the IFA with detailed reasons that respond to the review framework established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*).

I. Background

[3] The Applicant fears the police in the state of Haryana, India who accuse him of ties to outlawed political militants.

[4] The Applicant's cousin and uncle were, on separate occasions, arrested, detained and tortured by the police after the cousin assisted a Muslim friend whom the police accused of being involved with militants. The uncle died shortly after his release from custody.

[5] In February 2018, the cousin asked the Applicant for help and, on February 28, 2018, the Applicant met with a lawyer to intercede on behalf of his cousin and to file a case against the police for his uncle's death.

[6] On March 4, 2018, the police raided and searched the Applicant's home after they became aware of his legal action. The Applicant was arrested and detained at the police station where he was questioned about his cousin and the militants, beaten and tortured. The Applicant was released on March 6, 2018 following payment of a bribe. During his detention, the police

took his fingerprints, photos and signatures on blank papers. The police also ordered the Applicant to report to the station monthly starting on April 1, 2018.

[7] Fearing for his safety, the Applicant left his home to stay with relatives in Uttar Pradesh. With the help of an agent, the Applicant came to Canada on July 9, 2018 and filed a claim for refugee protection.

[8] The Applicant asserts that the police looked for him at his home and harassed his family when he did not fulfil his reporting obligation. On February 1, 2021, the Applicant presented an amendment to his original Basis of Claim form stating that the police continued to visit his home in March and April 2019 and on a monthly basis.

[9] The Applicant's refugee claim was heard by the RPD in February 2021. The RPD rejected the claim in a decision dated March 25, 2021 on the basis that there is a viable IFA available to the Applicant within India.

[10] The Applicant appealed the RPD's decision to the RAD.

## II. Decision under review

[11] On appeal to the RAD, the Applicant challenged the RPD's findings on the first prong only of the test for an IFA set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA). The RAD considered the Applicant's arguments but found that he had not established that his agents of persecution are either motivated or able to locate

him in Bengaluru. Although not in issue, the RAD also agreed with the RPD that it would not be unreasonable in the circumstances for the Applicant to seek refuge in the proposed IFA.

[12] For the RAD, the central issue in the Applicant's appeal was whether his name is included in databases available to the police that would identify him as a criminal or militant. Neither his four-month stay in Uttar Pradesh, nor the RPD's finding that the Applicant was a secondary target for the police was at issue in the RAD's IFA analysis.

[13] The RAD's findings on the first prong of the IFA test were:

1. The Applicant testified that he does not have a criminal record and presented no evidence to demonstrate that his detention was recorded in official police records. Rather, he was illegally detained and falsely accused.
2. There are mandatory requirements in many Indian cities, including Bengaluru, for individuals to register their residential location with the local police station or for landlords to provide information to authorities about their tenants. However, communication and connectivity between police forces across the country is limited except for cases of major crimes (e.g. smuggling, terrorism and some high-profile organized crime).
3. The objective documentary evidence for India does not support the Applicant's testimony that he will be traced through the tenant verification system or his Aadhaar card.
4. India has developed standardized security screening procedures for all airports. When leaving India through Delhi, the Applicant would have undergone an immigration check by the Bureau of immigration (BoI). The objective evidence states that each incoming and outgoing traveller's personal details are matched against the BoI's enhanced Black List/Look Out Circular database. However, the evidence regarding the effectiveness of exit controls is mixed as to whether an individual being sought by the Indian authorities would or would not be able to depart through normal exit controls.
5. The Applicant would have been required to provide documentation on departure and, on a balance of probabilities, would have been stopped if his name was actually on a police list as a criminal or militant.

### III. Analysis

[14] The RAD's reasons and conclusions regarding the availability of an IFA in India for the Applicant are subject to review for reasonableness (*Vavilov* at paras 10, 23; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32). Where the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and determine whether the decision "is based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[15] The concept of an IFA is integral to the definition of a Convention refugee. A claimant must be a refugee from a country, not from a particular region of a country (*Henao v Canada (Citizenship and Immigration)*, 2020 FC 84 at para 11 (*Henao*)). In determining whether a viable IFA exists for a refugee claimant, the RAD must be satisfied that (1) the claimant will not be subject to a serious possibility of persecution or a section 97 danger or risk in the proposed IFA; and (2) in all the circumstances, including the particular circumstances of the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at pp 595–597; *Henao at para 10*). Once the issue of an IFA is in issue, the claimant bears the onus of establishing that they do not have a viable IFA (*Mohammed v Canada (Citizenship and Immigration)*, 2022 FC 1333 at para 16).

[16] The Applicant first submits that the RAD erred in failing to address his section 96 nexus claim. He argues that his membership in a family constitutes membership in a social group for

purposes of refugee protection or that he falls within section 96 on the basis of perceived political opinion. The Applicant submits that this omission undermines the RAD's IFA analysis because the standard for making a section 96 finding is that of "more than a serious possibility" and not a balance of probabilities.

[17] The RAD acknowledged the Applicant's argument challenging the RPD's negative section 96 nexus conclusion but found that it was not a determinative issue. The RAD stated that it had, however, satisfied itself "on a balance of probabilities, that the Applicant will not 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.

[18] I agree with the Respondent that the existence of a viable IFA is fatal to a claim under section 96 or 97 (*Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62 at para 39). The RAD's determination that the Haryana police would not and could not track the Applicant to the IFA responds to sections 96 and 97. Stated otherwise, as the Applicant's agents of persecution do not have the ability to locate the Applicant in Bengaluru, he would not be subject to more than a mere possibility of persecution or to a section 97 risk or harm. As a result, I find no reviewable error in the RAD's treatment of the Applicant's section 96 nexus claim.

[19] The Applicant also submits that (1) the existence of the tenant verification system in Bengaluru puts him at risk throughout India and that the RAD failed to consider that the Applicant's alleged involvement with militants could be considered a "major crime"; and (2) the RAD failed to address the conflicting information in the National Documentation Package

(NDP) for India regarding the likelihood he would not have been able to depart India without attracting the authorities' attention.

[20] At the outset of its IFA analysis, the RAD stated that “the heart of the issue is whether the [Applicant’s] name is in databases available to the police that would identify him as a criminal or militant”. The RAD referenced the Applicant’s testimony that he does not have a criminal record and noted he had not presented any documentary evidence to demonstrate that his detention was recorded. Rather, he was illegally detained and falsely accused. In other words, the Applicant had not satisfied the RAD that his name is available in databases accessible to the police (such as the Crime and Criminal Tracking Network System (CCTNS)), identifying him as a criminal or militant. This finding, which is uncontested, is important because it frames the RAD’s analysis of the scope of the tenant registration system in India and the efficacy of India’s airport security screening procedures.

[21] The Applicant submits that there is conflicting information in the NDP regarding the use of the tenant verification system (TVS) to track criminal background and that the RAD provided no justification for its conclusion that the Haryana police could not use the TVS to find him in Bengaluru despite such conflicting evidence.

[22] The RAD stated that there is little communication between police forces in India except for cases involving major crimes. It is this exception that the Applicant characterizes as conflicting evidence. The RAD also referenced the conclusion of a criminal justice professor in the United States that tenant verification is extremely limited in India due to the volume of

workers who have migrated to large cities. In addition, the RAD addressed the Applicant's testimony that tenant verification is done on the basis of the Aadhaar identity card but concluded that the testimony was not corroborated by the objective evidence. The Unique Identification Authority of India (UIAI), the operator of the Aadhaar card system, states that the system is used to verify identity and is not a profiling tool. The UIAI further states that it is technically impossible for the government to track or spy on citizens using data collected by the Aadhaar.

[23] I find no reviewable error in the RAD's analysis and conclusion regarding the inability of the Haryana police to use the TVS or the information from the Applicant's Aadhaar card to track him to Bengaluru. First, as stated above, the RAD found that the Applicant is not listed in any database that would identify him as a criminal or militant. The Applicant's argument that the Haryana police took his fingerprints, photos and signatures on blank photos, with the result that he may figure in a police database is not persuasive and does not undermine the RAD's factual finding. Second, the RAD's review of the objective evidence on the use of the TVS or Aadhaar card system as a tracking mechanism is detailed and measured. As stated above, the panel acknowledged that the TVS may be used to track individuals involved in major crimes. The Applicant's argument that he may be wanted by police in India for a major crime is speculative absent evidence that he had been formally charged or recorded in respect of any crime.

[24] Turning to the Applicant's argument regarding airport departure controls, the RAD acknowledged the existence of mixed information in the NDP regarding the efficacy of India's airport screening procedures. The RAD stated that the objective documentary evidence reports that India has developed standardized security screening procedures for all airports and explained



the various components to the immigration check the Applicant would have undergone in departing India. The RAD acknowledged that the objective evidence regarding the effectiveness of India's exit controls is mixed:

[34] ... One source cited stated, "a person being investigated or sought by the authorities in India would not be able to depart through normal exit controls," while another source is quoted as saying, "most persons under investigation would not be prevented from departing the country" unless they are high-profile cases.

[25] The RAD found that the Applicant would have been required to provide documentation for an immigration check by Indian authorities prior to boarding his aircraft and that, on a balance of probabilities, "he would have been stopped if his name was actually on a police list is a criminal or militant". Again, the RAD found that the Applicant had provided no evidence that his detention was recorded in any report that would have been entered in the CCTNS or the Zonal Integrated Police Network that collects information on heinous crimes and the country's most wanted criminals. Therefore, I find that it was open to the RAD to arrive at its conclusion. It is not a question of preferring one source of information over another. Rather, the RAD's conclusion is consistent with both sources.

#### IV. Conclusion

[26] In summary, the RAD's finding of a viable IFA for the Applicant in Bengaluru, India is reasonable in light of the evidence and applicable law. Its analysis is clear and comprehensive and is justified on the evidence, including the objective evidence in the NDP. I am not persuaded by the Applicant's arguments and find no error in the RAD's assessment of the means and motivation of the Haryana police to locate the Applicant in Bengaluru that warrants the Court's intervention. As a result, the application will be dismissed.

[27] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT IN IMM-9752-21**

**THIS COURT'S JUDGMENT is that:**

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

"Elizabeth Walker"

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Judge

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

**DOCKET:** IMM-9752-21

**STYLE OF CAUSE:** UNKNOWN SURJEET SINGH (AKA SURJEET SINGH) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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**DATED:** JANUARY 17, 2023

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