

Federal Court



Cour fédérale

Date: 20230302

Docket: IMM-5409-22

Citation: 2023 FC 297

Vancouver, British Columbia, March 3, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

TIRATH SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of India. In this proceeding, he seeks judicial review of a decision dated May 10, 2022, made by the Refugee Appeal Division (the “RAD”) of the Immigration and Refugee Board of Canada.

[2] The RAD concluded that the applicant was neither a Convention refugee nor a person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee*

Protection Act, S.C. 2001, c. 27 (the “*IRPA*”) because he has a viable internal flight alternative (“*IFA*”) within India, in Hyderabad.

[3] The applicant submitted that the decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[4] For the reasons that follow, I conclude that the applicant has not shown that the RAD’s decision was unreasonable. The application will therefore be dismissed.

I. Facts and Events Leading to this Application

[5] The applicant arrived in Canada in November 2017 on a visitor visa.

[6] On December 29, 2018, the applicant claimed protection under the *IRPA*, on the basis that he feared persecution from members of certain political parties and the police in India owing to his membership in another political party.

[7] The applicant based his claim on the following. He claimed that in 2014, he joined the Aam Aadmi Party (the “*AAP*”) a political party in India and campaigned for an *AAP* candidate in a subsequent provincial election. In December 2016, during that campaign, he received threats from members of other political parties. In January 2017, supporters of rival parties attacked him. The applicant advised that these events were reported to the police but no action was taken. Then in July 2018, police officers arrested him in his home, detained him illegally and tortured

him. The police took his fingerprints and photograph and told him that they would find him anywhere in India.

[8] When the applicant's claim came for hearing before the Refugee Protection Division (the "RPD"), he amended his claim for *IRPA* protection. He advised that he was no longer a member of the AAP but had joined the pro-Khalistan movement, which favours an independent state for Sikhs.

[9] By decision dated December 23, 2021, the RPD found that the applicant is neither a Convention refugee under section 96, nor a person in need of protection under subsection 97(1) of the *IRPA* and therefore dismissed his claim. The RPD found significant concerns with the credibility of the applicant. It also found that he has a viable IFA in Hyderabad.

[10] The applicant appealed to the RAD. By decision dated May 10, 2022, the RAD confirmed the decision of the RPD and dismissed the applicant's claim for protection. The RAD agreed with the RPD that the applicant has a viable IFA in Hyderabad.

II. Legal Principles

A. Standard of Review

[11] The parties both submitted, and I agree, that the applicable standard of review in this Court is reasonableness.

[12] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

B. IFA

[13] One important issue in this application for judicial review is the RAD's finding concerning the availability of an IFA.

[14] The Federal Court of Appeal set out a two-prong test for an IFA in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA), at paras 8-10. The test requires that the RAD be satisfied, on a balance of probabilities, that (1) there is no serious possibility of the applicant being persecuted in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the applicant, conditions in the IFA are such that it would not be unreasonable for an applicant to seek refuge there. The applicant bears the onus to show that the proposed IFA is unreasonable. See also *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA), at para 15; *Thirunavukkarasu v Canada (Minister of Citizenship and Immigration)* (1993), [1994] 1 FC 589, [1993] F.C.J. No 1172 (CA), at pp. 595-599.

[15] The Federal Court of Appeal in *Ranganathan* held that the second prong requires “actual and concrete” evidence of “nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling to or temporarily relocating in a safe area”:

Ranganathan, at para 15. The Court of Appeal noted the “sharp contrast” of those circumstances compared with undue hardships resulting from loss of employment, reduction in quality of life, the absence of relatives or loved ones in the proposed IFA, and comparable circumstances.

III. Analysis

[16] The applicant made two central submissions to support his position that the RAD’s decision was unreasonable. I will address them in turn.

A. Absence of Corroborative Evidence from the Applicant’s Parents

[17] With respect to the first prong of the IFA analysis, the RAD concluded that the applicant faced no serious possibility of persecution by opposing political parties due to his support of the AAP. The RAD considered the applicant’s testimony about his alleged arrest and detention by the police, and his claim that he was subsequently pursued by the police and members of opposing political parties due to his political activities. The applicant testified that political opponents and the police continued to look for him and visited his home in India. The RAD noted the absence of any reference to the visits in the applicant’s Basis of Claim narrative.

[18] The RAD disagreed with the applicant’s submission that the RPD erred by failing to presume the truth of his testimony about the visits from opposing parties and the police and by

making negative credibility findings based only on the absence of corroborative evidence. One issue was the absence of evidence from his parents.

[19] In this Court, the applicant challenged RAD's determination that corroboration of his illegal detention by police would reasonably be expected from his parents. The applicant's legal position on corroborative evidence from his parents is neatly summarized in *Senadheerage v. Canada (Citizenship and Immigration)*, 2020 FC 968, [2020] 4 FCR 617, at para 24:

Not all elements of a claim for asylum are susceptible of corroboration. As acts of persecution are typically illegal or immoral, one cannot expect agents of persecution to provide written evidence of their deeds. They may actively try to suppress or withhold such evidence: *Ndjavera v. Canada (Citizenship and Immigration)*, 2013 FC 452 (*Ndjavera*), at paragraph 7. Third parties who witnessed acts of persecution may put themselves at risk if they provide written statements. When asylum claimants allege that the police failed to protect them, it is pointless to require a police report certifying this: *Fontenelle v. Canada (Citizenship and Immigration)*, 2011 FC 1155, 5 Imm. L.R. (4th) 14, at paragraphs 46–47...

[20] The applicant submitted that it was unreasonable to expect a statement or explanation from his parents and that he did not ask his parents for a letter of support because they were fearful and would put themselves at risk if they provided statements (they lived in the same village as the police). The applicant contended that the RAD did not assess his explanation and did not address his written arguments and case law to support it. He also argued that there was no point in asking the police for evidence to support his position and that he had submitted a statement from the village Sarpanch (head of the village council) to support his claim.

[21] The respondent submitted that a decision maker may require corroborative evidence if the decision maker sets out independent reasoning for requiring corroboration, such as doubts regarding the applicant's credibility (citing *Senadheerage*, at para 34). The respondent maintained that the RAD provided such independent reasoning for requiring corroboration because it found issues with the applicant's credibility concerning his testimony about an alleged assault by the police in 2017 and his allegations that the police and rival party members continued to search for him, which was not mentioned in his Basis of Claim. The respondent also submitted that the applicant's arguments amount to a disagreement with the RAD's findings on the merits, but do not constitute grounds for judicial review (citing *Lawani v. Canada (Citizenship and Immigration)*, 2018 FC 924 at para 25).

[22] For the following reasons, I conclude that the applicant has not demonstrated a reviewable error in the RAD's analysis.

[23] The RAD provided several reasons to explain its disagreement with the applicant's submissions. It did not rest its analysis solely on the absence of corroborative evidence from the applicant's parents. In particular:

- a) The RAD found that the applicant's testimony to be "vague, evasive and inconsistent on its face", a finding not challenged in this Court. This conclusion was supported by express reasons and was reasonably open to the RAD on the record.
- b) The RAD accurately observed that the applicant's BOC contained no reference to the visits from police and party members, and found no reasonable explanation. The RAD's reasons noted that the BOC was filed a year after the applicant arrived in Canada, and

that he testified that he did not include any information about the visits because he was “under pressure. I was so stressed that I did not remember it”.

- c) The RAD relied on the absence of evidence in the Sarpanch’s affidavit of the applicant’s detention by the police. Looking at the affidavit, the RAD’s conclusion was clearly open to it. Contrary to the applicant’s submission, I do not read the RAD’s reasoning to expect corroborative evidence from the police.
- d) Finally, the RAD noted that the applicant was no longer a member of the AAP, involvement in which formed the basis of his claim for *IRPA* protection. Later in its reasons, the RAD stated that the applicant’s membership ended when he stopped his AAP activities and started supporting the Khalistan movement in 2020.

[24] Focusing on the RAD’s statement that “corroboration would reasonably be expected from his parents of both the visits and the alleged police detention given their payment of a bribe to effect his release”, I find no reviewable error.

[25] This Court held in *Senadheerage* that a decision maker may only require corroborative evidence if: (1) The decision-maker clearly sets out an independent reason for requiring corroboration, such as doubts regarding the applicant’s credibility, implausibility of the applicant’s testimony or the fact that a large portion of the claim is based on hearsay; and (2) The evidence could reasonably be expected to be available and, after being given an opportunity to do so, the applicant failed to provide a reasonable explanation for not obtaining it: *Senadheerage* at para 36.

[26] Here, it is clear that the RAD's analysis shows that it was aware of and applied these two elements in *Senadheerage*. On the first, the RAD agreed with the RPD's concerns about the applicant's credibility. The RAD found that the applicant's testimony about the visits from police and party member was vague, evasive and inconsistent on its face. The RAD also expressly agreed with the RPD that there was insufficient credible and reliable evidence that he was arrested and detained by the police in 2017. On the second element, the RAD found that the applicant omitted reference to the police and party members' visits in his Basis of Claim narrative without reasonable explanation. The RAD also referred earlier in its reasons to the applicant's testimony to the RAD to explain why he did not present letters from his parents corroborating the visits (quoting him that "they are afraid"). The RAD expressly found that corroboration of the visits would "reasonably" be expected from his parents.

[27] Accordingly, the applicant's first submission does not succeed.

B. Failure to Consider Persecution as both a Sikh and Supporter of Khalistan

[28] The applicant contended that the RAD erred in its IFA analysis by analysing solely whether an internal flight alternative was available to the applicant in India as a Sikh man. According to the applicant, the RAD did not conduct an analysis based on the applicant as a religious Sikh man who also supports and advocates for the creation of an independent Sikh state of Khalistan.

[29] The applicant submitted that was not a fatal flaw for him to update his Basis of Claim at the outset of the RPD hearing to add that he was an advocate for Khalistan and a registered voter

in a referendum supporting it. The applicant submitted that the RAD failed to analyse the paragraphs in his written submissions outlining the risks he would face as an advocate of an independent Khalistan and that he could not express his political beliefs safely anywhere in India.

[30] The respondent noted that both the RPD and the RAD found that the applicant did not present deeply held pro-Khalistan state beliefs nor that he was an active member of the Khalistan movement. The respondent argued that the RAD came to this conclusion reasonably based on the late and material change to his claim for *IRPA* protection.

[31] I agree substantially with the respondent.

[32] The RAD provided 11 detailed paragraphs of reasoning under the heading “No serious possibility of persecution as an advocate for independent Khalistan”. Its conclusions on this issue were as follows (at paragraphs 32 and 35 of the RAD’s reasons):

Considering the evidence as [a] whole I agree with the RPD that the [applicant] did not present sufficient credible evidence to establish, on a balance of probabilities, that he has been an active member of the Khalistan movement or that he has deeply held views on the topic aside from presenting a Punjab Referendum Khalistan Voter Registration Card.

[...]

Notwithstanding his bald submissions, I agree with the RPD that the [applicant] failed to establish, on a balance of probabilities, that his support of Khalistan is a deeply held political opinion and an innate element of his identity so that refraining from expressing his support of Khalistan would not infringe on a fundamental right and would not constitute persecution.

[33] To reach this conclusion, the RAD engaged in a detailed analysis, which I will describe:

- The RAD recognized that it was well established in law that a claimant cannot be asked to renounce deeply held beliefs or stop exercising their fundamental rights or concealed, retrain or repress innate elements of their identity in order to avoid persecution.
- The RAD set out the applicant's position that he had become a registered voter supporting Khalistan in a 2020 referendum and that he was advocating for Khalistan in the Sikh temple and encouraging others to raise their voices in support of Khalistan, and that continue to do so wherever he goes in India.
- The RAD analyzed the applicant's testimony about his involvement with the Khalistan movement, which revealed that he stopped his activities for the AAP about one year before the RPD hearing, at which time he was in Canada. The applicant testified that he delivered speeches at the temple and asked people to vote for a separate Sikh homeland. These speeches began six months before the hearing and he had delivered five or six speeches. He had not been involved in any other activities.
- The RAD considered the applicant's reasons for not identifying his involvement with the Khalistan movement in Canada until the RPD hearing, which were that he did not get an opportunity to discuss it earlier, was busy doing his job as a truck driver and then had spoken to his counsel.
- The RAD recognized the applicant's position that there was nothing wrong with updating his narrative at the outset of the hearing and did not require corroborating evidence. The RAD explained that the RPD's rules outline a procedure for making changes to or adding information to a Basis of Claim, including that any amendments be provided without delay and must be received by the RPD no later than 10 days before the date fixed for a hearing. Given the materiality of the applicant's allegations about his support for the Khalistan movement and his representation by counsel, the RAD found his explanations for not submitting an amended Basis of Claim were not reasonable and detracted from the credibility of his allegations.
- The RAD found that because the applicant's Sikh temple was in Canada and his alleged activities to support the Khalistan movement all took place in Canada, his explanation for not providing letters to corroborate his activities was not reasonable. The unreasonable explanation and his lack of effort to obtain such letters both supported a negative inference of credibility.
- The RAD considered the contents of a 2019 Response to Information Request prepared by the Immigration and Refugee Board of Canada relating to the treatment of Khalistan supporters outside of Punjab entitled "Situation of Sikhs outside the state of Punjab, including treatment by authorities and society; ability

of Sikhs to relocate within India; treatment of Khalistan supporters or perceived supporters outside of Punjab (2017-October 2019)”.

- The RAD recognized the applicant’s submissions that the RPD erred in determining that he was not an active member of the Khalistan movement and did not hold deeply held pro-Khalistan opinions that would give rise to a serious possibility of persecution in India. The RAD recognized the applicant’s submission that he was a vocal supporter and advocate for Khalistan and would continue his advocacy in India regardless of where in India he may be.

[34] The applicant did not impugn the RAD’s assessment of the risks he faced as a Sikh man returning to India. He argued that the RAD made a reviewable error because it failed to consider his written submissions to the RAD in which he described the risks he feared both as a Sikh man and as an advocate for an independent Khalistan.

[35] In my view, for the RAD to be legally required to analyze the alleged risk to the applicant on this dual basis, the applicant had to show (and the RAD had to accept) that he possessed personal characteristics that exposed him to a serious possibility of persecution under *IRPA* section 96, or ill treatment for subsection 97(1), both as a Sikh man and as an advocate for Khalistan as he alleged. On the evidence, he did not do the latter. The RAD’s conclusions at paragraphs 32 and 35 of its reasons were that the applicant did not have such personal characteristics – in Convention terms, he did not show a nexus to a ground of persecution on the basis of his alleged advocacy for Khalistan. Without that factual basis, the RAD was not required in law to conduct any further analysis of the possible risks to the applicant as an advocate for Khalistan. Put another way, the RAD did not accept that the applicant was an active member of the Khalistan movement or that he had deeply held views on the topic and, accordingly, the RAD did not have to consider whether he might be persecuted or mistreated on that basis on his return to India.

[36] The applicant also argued that the RAD's conclusions stemmed from an error in analyzing whether he was allowed to amend his Basis of Claim at the hearing. He argued that there was only one change (his change to support Khalistan rather than the AAP) and there was no prejudice to the respondent. The applicant submitted that the RAD should not have made a negative credibility assessment as a result.

[37] This Court has often stated that all the important facts and details of a claim must be included in the Basis of Claim, and the failure to include them can affect a claimant's credibility: see e.g., *Oketokun v. Canada (Citizenship and Immigration)*, 2022 FC 232, at para 17; *Occilus v Canada (Citizenship and Immigration)*, 2020 FC 374, at paras 20-21, 23-24.

[38] The applicant did not allege that the RAD erred in law when making its findings on credibility at this stage of its reasons.

[39] In my view, there is no basis for the Court to interfere with the RAD's conclusions. The basis for the applicant's amended claim arose after he filed the Basis of Claim, about a year before the RPD hearing, and the applicant did not amend his claim until the start of the hearing. The RAD's reasons demonstrate that it was aware of the circumstances and considered a number of factors, including concerns about the applicant's credibility, before reaching its conclusion that the applicant did not present sufficient credible evidence that he was an active member of the Khalistan movement or that he had deeply-held views on the topic (aside from presenting a Punjab Referendum Khalistan Voter Registration Card). The RAD considered the lateness of his change to his claim for protection and the applicable RPD rules, that the change was material,

that he was represented by counsel, his testimony seeking to explain the change, the extent of his involvement in the Khalistan movement, and the absence of letters from people attending his temple in Canada to corroborate his claim of advocacy activities. Before reaching its overall conclusions on this topic (in paragraph 35 of its reasons), the RAD also considered objective evidence in the IRBC's RIR about the treatment of Khalistan supporters outside of the Punjab in India, and considered the applicant's submissions.

[40] The applicant has not shown that RAD's conclusions were unreasonable given the material change going to the core of the applicant's claim for *IRPA* protection. His submissions on credibility are, in substance, a request to reweigh the evidence and circumstances that led to a negative credibility finding, and ignore the rest of the reasons provided by the RAD that were not challenged on this application, in order to impugn its broader conclusion. There is no permissible basis in *Vavilov* to do so on this application: *Vavilov*, at paras 100, 125-126.

[41] Accordingly, I conclude that the RAD did not make a reviewable error in its assessment of whether the applicant will be subject to persecution as both a Sikh man and supporter of Khalistan.

IV. Conclusion

[42] The application will therefore be dismissed.

[43] Neither party proposed a question to certify for appeal and none arises.

JUDGMENT in IMM-5409-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5409-22

STYLE OF CAUSE: TIRATH SINGH v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 18, 2023

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DATED: MARCH 2, 2023

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