

Federal Court



Cour fédérale

Date: 20230720

Docket: IMM-8869-22

Citation: 2023 FC 996

Ottawa, Ontario, July 20, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

**RANBIR SINGH
GURMEET KAUR
ANKIT KUMAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants—Ranbir Singh, his wife, Gurmeet Kaur, and their son—seek judicial review of the refusal of their refugee claim by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. For the reasons given below, I find the RAD reasonably concluded that the applicants have a viable internal flight alternative [IFA] within

India, and that they therefore do not meet the definitions of Convention refugees or persons in need of protection.

[2] The application for judicial review will therefore be dismissed.

II. Issue and Standard of Review

[3] As the parties agree, the RAD's determination that the applicants have an IFA within India is reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. The sole issue is therefore whether the applicants have met their onus to show that the RAD's decision is unreasonable. For a decision to be found unreasonable, the Court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” expected of a reasonable decision: *Vavilov* at para 100.

III. Analysis

(1) The applicants' refugee claim

[4] The applicants' refugee claim is based on Mr. Singh's risk of harm from the police in Haryana, acting at the behest of a wealthy and influential neighbour. In February 2017, Mr. Singh and his father complained to the neighbour about the noise being created by a party at the neighbour's house. The neighbour threatened Mr. Singh and his father. When they complained to the police, the neighbour used his influence to get the police to turn against Mr. Singh instead. In March, an incident at Mr. Singh's house turned into an unsubstantiated

accusation of militancy by the police. The Haryana police detained and tortured Mr. Singh, releasing him only upon payment of a bribe and the condition that he report to the police each month.

[5] In the weeks that followed, the police often visited Mr. Singh's house looking for information. The applicants went to live with relatives in New Delhi in late April to escape this situation. A few days later, however, the police violently interrogated Mr. Singh's father, who was forced to reveal where they were. As a result, the applicants moved to the house of an agent, who helped them leave the country in July 2017.

[6] Mr. Singh and Ms. Kaur's daughter remained in India, living with Ms. Kaur's parents, as she did not have a passport that would enable her to leave with her family. The daughter was kidnapped in February 2019, after the applicants had left India, an event the applicants attribute to the neighbour. A supplementary affidavit sworn by the father in 2020 about the kidnapping includes the statement that the "police still visits our house looking for my son and his family."

(2) The rejection of the applicants' refugee claim

[7] The Refugee Protection Division [RPD] concluded the applicants have a viable IFA in Delhi or Mumbai. A refugee claimant who has a viable IFA, and who can therefore seek safe and reasonable refuge within their home country rather than seeking Canada's protection, does not meet the definition of a Convention refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at pp 592–597, citing

Rasaratnam v Canada (Minister of Citizenship and Immigration), [1992] 1 FC 706 (CA) at pp 710–711; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at paras 38–44.

[8] The analysis established by the Federal Court of Appeal for the existence of an IFA has two aspects, or “prongs.” The first of these asks whether the refugee claimant will be subject to a serious possibility of persecution or to a risk of harm under subsection 97(1) of the *IRPA* in the proposed IFA location: *Thirunavukkarasu* at p 595; *Sadiq* at paras 39, 43. The claimant may assert they will remain at risk in the proposed IFA location from the same individual or group who had originally put them at risk. In such cases, the risk assessment often considers whether the individual or group could, and would, cause harm to the claimant in the IFA, that is, whether they have the “means” and “motivation” to do so.

[9] The RPD found the Haryana police would not have the means to track the applicants down in Delhi or Mumbai. It concluded the police had not acted legally in their treatment of Mr. Singh and that it was therefore unlikely his name would appear in India’s police database. As a result, it was unlikely he would be the subject of interstate communication or that his location would be revealed as a result of India’s tenant registration system as the applicants had argued. The RPD further noted there was no evidence or allegation that the police had taken any steps against Mr. Singh in Delhi after they had forced his father to divulge his location. In the RPD’s view, this lent further support to the conclusion that the applicants would not be the subject of interstate communication.

[10] The second “prong” of the IFA test involves an assessment of whether, in all of the circumstances, it would be reasonable to expect the claimant to seek safety in the IFA:

Thirunavukkarasu at p 597; *Sadiq* at para 44. The RPD concluded it would be reasonable for the applicants to relocate to Delhi or Mumbai.

[11] The RPD also addressed the applicants’ allegation that the neighbour was behind the daughter’s kidnapping, concluding the connection between the neighbour and the incident was simply speculation with no objective basis.

(3) The applicants’ appeal to the RAD

[12] On appeal to the RAD, the applicants argued the RPD erred in its findings on both prongs of the IFA test, and in its conclusions regarding the kidnapping. Only the first prong of the IFA test remains at issue on this application.

[13] On that issue, the applicants argued before the RAD that the RPD erred in concluding Mr. Singh’s name would not be in the police database. They claimed the accusations of militancy, his mistreatment, detention and torture, and the continuous visits to Mr. Singh’s father showed the police remain interested in Mr. Singh, such that the police would more likely than not be looking for him and would include his name in the database. They also argued the RPD erred in concluding that even if Mr. Singh’s name were in the database, it was unlikely his location would be identified for the Haryana police through the tenant verification system. Finally, the applicants argued the RPD erred in concluding that the Haryana police took no steps

to locate them in Delhi since the relatives they had stayed with had broken off contact, such that the Haryana police might have approached those relatives without them knowing about it.

[14] The RAD acknowledged these arguments and addressed them. It agreed with the RPD that the Haryana police did not have the means to track the applicants. It also agreed it was unlikely Mr. Singh's name would appear in the police database since the police did not seriously believe him to be a militant, but rather were only interested in him due to the neighbour's interest and influence. The RAD further agreed with the RPD's conclusions regarding the tenant verification system.

[15] On the issue of steps taken by the police to pursue Mr. Singh in Delhi, the RAD noted the applicants bore the burden of showing there was no viable IFA, but they had tendered no evidence to show the police had visited their Delhi relatives. The RAD found that speculation that police might have contacted relatives with whom the applicants were no longer in contact was not substantiating evidence, and that the RPD therefore did not err in finding there was no evidence the Haryana police had approached the Delhi police to contact the relatives.

(4) The RAD's decision was reasonable

[16] The applicants focus their reasonableness arguments on a single issue: whether the RAD's IFA analysis improperly failed to consider that the police in Haryana state would be able to find them by obtaining their location through interrogation and harassment of Mr. Singh's father, as they had done in the past. They argue they are not obliged to live in hiding in an IFA without disclosing their location to Mr. Singh's father, and that the father is similarly not obliged

to risk harm by refusing to disclose their location to the police. For these propositions, they cite this Court's decisions in *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 at paras 49–52, and *AB v Canada (Citizenship and Immigration)*, 2020 FC 915 at paras 20–21, each citing *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586 at para 29.

[17] I am not satisfied the applicants have met their burden to show that the decision is unreasonable: *Vavilov* at para 100. I reach this conclusion for two reasons.

[18] First, the argument the applicants now advance is not one that was put before the RAD. While the submissions of the applicants' counsel before the RAD (not counsel on this application) referred to the police's visits to the father as a sign of their continued interest in Mr. Singh, they raised neither the suggestion that the police would be able to locate him through the father, nor the argument that they would effectively have to live in hiding. Rather, the arguments about the Haryana police's ability to locate Mr. Singh were limited to his name being in the police database and his location being revealed when he rented property. As this Court has concluded on a number of recent occasions in similar circumstances, the Court will generally not grant judicial review on the basis of an argument that could have been put before the RAD but was not: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 875 at paras 2, 23–58; *Kumar v Canada (Citizenship and Immigration)*, 2023 FC 839 at paras 5, 18, 26–29; *Kodom v Canada (Citizenship and Immigration)*, 2023 FC 305 at paras 5, 12.

[19] This is not a mere technicality. The issues on an appeal to the RAD are primarily defined by the appellant: *Refugee Appeal Division Rules*, SOR/2012-257, s 3(3)(g)(i); *Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at paras 30–31. In deciding an appeal in

accordance with the principles of justification and transparency, the RAD must “meaningfully account for the central issues and concerns raised by the parties” [emphasis added]: *Vavilov* at para 127. As noted above, the applicants referred to the police visits to the father in their arguments to the RAD, but only argued the visits showed the police’s motivation to pursue Mr. Singh. The RAD considered these arguments and responded to them. There was no argument the applicants would have to live in hiding in the IFA because the police could locate them through the father. As Justice Roy explained thoroughly in *Singh*, not raising an issue before the RAD prevents the RAD from considering and analysing the argument at first instance as Parliament intended, and prevents the Court from assessing the RAD’s analysis on review: *Singh* at para 30, citing *Vavilov* at paras 75, 81, 99. It is therefore difficult for this Court to fault the RAD for not addressing an argument that was not put before it: *Singh* at paras 44–45, 53 and the cases cited therein.

[20] The second reason I cannot accept the applicants’ argument is that it is countered by the RAD’s conclusions about the motivation of the Haryana police to take steps against Mr. Singh in another state, even if they knew where he was. On this issue, Mr. Singh’s primary allegation was that independent of the neighbour, the Haryana police were motivated to find him because he was associated with militants and his name would appear in the database. However, the RPD and the RAD concluded the police did not seriously consider he was a militant, a finding the applicants do not challenge.

[21] Further, even when the Haryana police had obtained Mr. Singh’s whereabouts in Delhi from his father, there was no evidence they took any steps with that information. The RAD

reasonably agreed with the RPD that this supported a finding that the Haryana police would not be interested in pursuing Mr. Singh outside Haryana. The applicants' only argument to the RAD on this issue was that since the relatives in Delhi had broken off communication with them, it was unreasonable to conclude they had not been approached. I note that on my review of the record, the assertions by counsel before the RAD that the relatives in Delhi had "broke[n] all ties" with the applicants, and that the applicants had "no communication with them whatsoever" appear to be unsupported by evidence. In any event, it was reasonable for the RAD to recognize that this argument did not create substantiating evidence.

[22] Contrary to the applicants' submission, I cannot take the RAD's reasons as creating a new obligation on refugee claimants to show not only that an agent of persecution has the means and motivation to pursue them to an IFA, but also that they had previously acted on such means and motivation. The RAD makes no such statement and such an obligation cannot be read into its reasons. Rather, the RAD was reviewing the evidence on the record to determine what it showed about the means and motivation of the Haryana police to pursue Mr. Singh outside Haryana. It was reasonable in the circumstances for that assessment to include consideration of what steps, if any, the police had taken to pursue Mr. Singh beyond Haryana in the past when they had information about his whereabouts.

[23] In this regard, the applicants refer to paragraph 50 in *Ali*, in which Justice Russell stated that "[g]iven the dangers posed by knowledge of their whereabouts [...] the Applicants would be forced to hide from family members and friends and cut off communications." They argue this stands for the proposition that a claimant's inability to live in an IFA is posed by the mere

knowledge of the claimant's whereabouts, and not the actual realization of the harm arising from that knowledge.

[24] I cannot agree. The ultimate assessment in the first prong of the IFA test is whether the claimant would face a serious possibility of persecution on a Convention ground, or a likelihood of a section 97 danger in the IFA. The agent of persecution's mere knowledge of the location of the claimant does not alone establish such risk or danger if they are unable or unwilling to act on it. In *Ali*, Justice Russell concluded the evidence showed that the agents of persecution were willing (*i.e.*, motivated) to pursue the applicants beyond their region: *Ali* at paras 44–46. As a result, the knowledge of the applicants' whereabouts resulted in the dangers posed, provided the agents of persecution had the operational capacity to carry out their motivation, an issue Justice Russell also addressed: *Ali* at paras 56–58. In the present case, the RAD found the evidence did not establish the Haryana police had the means or the motivation to pursue Mr. Singh beyond Haryana. Simply stating that they could potentially obtain knowledge of his location through his father is insufficient, even if the applicants had put this argument before the RAD.

IV. Conclusion

[25] I am therefore not satisfied that the applicants have demonstrated that the RAD's decision was unreasonable. The application for judicial review must therefore be dismissed. Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-8869-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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