Federal Court Cour fédérale

**Date: 20230824**

**Docket: IMM-6636-22**

**Citation: 2023 FC 1136**

**Ottawa, Ontario, August 24, 2023**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**SANDEEP SINGH BHULLAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant, Sandeep Singh Bhullar, is a citizen of India. He seeks judicial review of a decision by the Refugee Appeal Division [RAD], dated June 20, 2022, dismissing the Applicant's appeal and confirming the decision of the Refugee Protection Division [RPD] rejecting his claim for refugee protection, finding that the Applicant is neither a Convention

refugee nor a person in need of protection because he has a viable internal flight alternative [IFA] in Mumbai [Decision].

[2] The Applicant alleges that he fears gang members associated with Sukhpreet Singh and the Bambiha gang by reason of having identified one of them as his father's murderer. The determinative issue for both the RPD and the RAD was the Applicant's viable IFA in Mumbai.

[3] In his written submissions, the Applicant submits that the Decision is unreasonable on the basis that: (i) the RAD erred in its treatment of the new evidence; (ii) it failed to seriously consider the prohibition of return to a substantial risk of torture under the *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* [Convention Against Torture]; and (iii) the RAD erred in its assessment of the IFA and failed to respect the legal criteria. During the hearing, the Applicant focused his arguments on issues (i) and (iii), conceding that the Convention Against Torture does not have direct application *per se,* but nevertheless submitted that the principles in Article 3(2) have application generally to the present matter in that one must take into account the pattern of human rights violations and the situation for Sikhs on the ground.

[4] The Respondent submits that the Decision is reasonable because (i) the RAD reasonably rejected the new evidence on the basis that it was factual evidence; (ii) it is premature to raise the Convention Against Torture because the refusal of a refugee claim is not a removal from Canada; and (iii) the RAD properly applied the test for an IFA and the Applicant is simply inviting the Court to reweigh the evidence.

[5] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has failed to persuade me that the Decision is unreasonable. For the reasons below, this application for judicial review is dismissed.

## II. Analysis

[6] The first issue is whether the RAD erred in rejecting the three new documents submitted by the Applicant. The RAD concluded that the following three pieces of new evidence were inadmissible on the basis that they were written and published years prior to the RPD hearing and could have reasonably been expected to be submitted before the RPD:

1. United Nations, "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," dated May 30, 2011 [CAT Decision].
2. Judith Malik, "A Comprehensive Discussion of the Internal Flight Option for Punjab Sikh Survivors of Political Rape and other Forms of Institutionalized Violence," dated October 30, 2004, unpublished [Malik Document].
3. Jaskaran Kaur and Sukhman Dhami, "No Safe Haven: The Myth of the Internal Flight Alternative in India for Returned Sikh Asylum Seekers", dated December 27, 2004, a letter addressed to the Immigration and Refugee Board of Canada [ENSAAF Letter].

[7] The Applicant submits that the documents ought to have been accepted as the documents fall into the category of jurisprudence and doctrine. The Applicant highlights that in the table of contents to their appellant's record before the RAD, they described them as such. The Applicant

submits that the Malik Document and the ENSAAF Letter are doctrine, while the CAT Decision is jurisprudence.

[8] On the other hand, the Respondent pleads that the ENSAAF Letter and the Malik Document are not doctrine as they are not interpreting the law or expressing an opinion on the law. Rather, the documents provide a factual perspective on the country conditions in India. The Respondent submits that the CAT Decision (i) was relied upon by the Applicant for a factual statement; and (ii) in any event is irrelevant, having no bearing on the applicable law or outcome of the present case. The Respondent highlights that, in reference to the documents, the Applicant provided notice to the RAD that he “will be relying on new evidence according to subsection 110(4) of [IRPA]”.

[9] As to the ENSAAF Letter and the Malik Document, I find that they are evidence rather than doctrine or jurisprudence. They provide factual information about conditions in India. The Malik Document states that it was prepared to respond to “assertions of officials of the Canadian Immigration and Refugee Board that internal flight (i.e. resettlement elsewhere in India) is a reasonable alternative to international flight for Sikh women…”. The ENSAAF Letter states that “ENSAAF writes this letter to recommend against the return of Sikh asylum seeker from Punjab, India to India”. They are not legal analysis and are not treated as such by the Applicant in his submissions. I further note, and agree with, Justice Elizabeth Walker’s analysis in *Basra v Canada (Immigration, Refugees and Citizenship)*, 2023 FC 707 at paragraph 15, where she considered the same two documents and concluded that they were not legal doctrine.

[10] As to the CAT Decision, I agree with the Applicant and I find it falls within the category of jurisprudence. Although the Applicant relied upon it for a factual proposition, namely the existence of human rights violations in India, and presented it as evidence to the RAD, that does not change the nature of the document. The CAT Decision is a decision of the Committee against Torture, dated May 30, 2011, concerning a complaint by Nirmal Singh against Canada regarding his deportation to India. The RAD erred in rejecting it.

[11] I do not, however, find that this error results in the Decision as a whole being unreasonable. In order to me to intervene, the Applicant must satisfy me 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", and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 100). The Supreme Court cautions that "[i]t would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep." (*ibid*). Rather, I must be satisfied that "any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable" (*ibid*).

[12] I have not been satisfied that the RAD's failure to admit the CAT Decision is sufficiently central or significant to render the RAD's decision unreasonable. While removal or deportation to torture would ordinarily be a breach of Article 3 of the Convention Against Torture, this is not at issue in the present case. This Court has repeatedly and consistently held that such an

argument is premature at this stage on the basis that the refusal of a refugee claim is not a removal (*Singh v Canada (Citizenship and Immigration)*, 2022 FC 1692 at para 12; *Kumar v Canada (Citizenship and Immigration*), 2022 FC 1700 at para 13; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 164 at para 11; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 341 at paras 15-18; *Ogiemwonyi v Canada (Citizenship and Immigration)*, 2021 FC 346 at paras 38-39; *Davila Valdez v Canada (Citizenship and Immigration)*, 2022 FC 596 at paras 21-22).

[13] The error in not admitting the CAT Decision, which speaks to the issue of removal and a claimant's rights under Article 3 of the Convention Against Torture, is not only superficial to the merits of the RAD's decision, it is ultimately irrelevant given the jurisprudence of this Court cited above.

[14] The second issue raised by the Applicant, albeit primarily in his written submissions, is the allegation that the RAD erred by failing to consider Canada's international law obligations under the Convention Against Torture. As noted above, this argument has been addressed and rejected repeatedly by this Court. While the Applicant indicated that Article 3 of the Convention Against Torture should be taken into account in conjunction with the factual situation on the ground in India, I disagree with the Applicant that the RAD erred in this regard. It is incumbent on the RAD to take into account the Applicant's evidence as it pertains to his case, but the RAD was not obliged to consider the Convention Against Torture. The RAD acknowledged that the Applicant argued that the RPD had failed to seriously consider the prohibition of return to a

substantial risk of torture, but ultimately determined that the RPD was correct in finding that the Applicant had a viable IFA in Mumbai.

[15] The third issue raised by the Applicant is the RAD's assessment of the IFA. The test for establishing the viability of an IFA is two-pronged. Both prongs must be satisfied in order to make a finding that a claimant has an IFA. The first prong consists of establishing, on a balance of probabilities, that there is no serious possibility of the claimant being subject to persecution in the proposed IFA. In the context of section 97, it must be established that the claimant would not be personally subjected to a section 97 danger or risk in the proposed IFA. The second prong requires that the conditions in the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including of the claimant's personal circumstances, for the claimant to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 597-598; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10-12; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 9; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5 [*Mora Alcca*]; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17). It is a refugee claimant, and not a respondent or the RAD, who bears the onus of demonstrating that the IFA is unreasonable (*Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21).

[16] The Applicant submits that as to the first prong, there is evidence in the record that he would be found and killed. The Applicant highlights the letters from his mother and a local lawyer to that effect. The Applicant further highlights newspaper articles in the record, including

a quote from a director general in the police in Punjab, concerning the cooperation between the police and the criminals involved in the drug trade.

[17] The Respondent submits that the Applicant is simply seeking to have this Court re-weigh the evidence and has not indicated a specific error on the part of the RAD.

[18] I have not been persuaded that, based on the record before it, the RAD committed a reviewable error in the context of its analysis of the first prong of the IFA test. As stated by Justice René LeBlanc in *Mora Alcca*, the onus on the Applicant is an exacting one:

> [14] I am well aware that the onus of demonstrating that an IFA is unreasonable in a given case, an onus that rests with the claimant, is an exacting one. In fact, it requires nothing less than demonstrating the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions.
>
> [Citations omitted.]

[19] Furthermore, the RAD's findings on the IFA are essentially factual, are based on its assessment of the evidence, are within its area of expertise and thus require a high degree of deference from this Court (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 459 at para 23).

[20] As discussed during the hearing, there is no evidence in the record of the Bambiha gang's size or sphere of influence, or any mention of the Bambiha gang at all, other than the Applicant's assertion that they are "strongly influential". Neither of the letters from his mother or the lawyer mention the gang by name, nor do the country condition documents refer to them. I therefore

find that the Applicant's arguments in this respect are an impermissible request to re-assess the evidence considered by the RAD (*Vavilov* at para 125).

[21] As to the second prong of the IFA test, the Applicant submits that: (i) the conditions for Sikhs are deplorable and he is easily identified as a Sikh man with a turban; and (ii) based on *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*], it would be unreasonable for him to be expected to cease communicating with his family and go into hiding.

[22] The Respondent submits that: (i) the Applicant failed to establish, based on his profile, that it would be objectively unreasonable for him to relocate to Mumbai; and (ii) the Applicant's argument based on *Ali* is a new argument that was not raised before the RAD and, in any event, he has no evidence whatsoever to support such an assertion.

[23] As to the first of the two points, I am not persuaded that the RAD erred in its consideration of the second prong of the IFA test. The RAD considered the Applicant's arguments as to the reasonableness of the IFA, his profile as a Sikh man, and the country condition evidence, before justifying in a clear manner why it came to the conclusion it did.

[24] As to the Applicant's reliance on *Ali*, I have considered the content of the Applicant's submissions before the RAD and find that the Applicant is improperly raising this issue for the first time on judicial review. The Applicant did not raise before the RAD that he would have to cease communicating with family or force them to lie or jeopardize their safety in order to prevent the Bambiha gang from locating him. I agree with the Respondent that there is no

evidence in the record to support the proposition that he would have to cease communications with his family or lie to them.

[25] This Court has consistently held that it is inappropriate to grant judicial review based upon a ground not raised before the RAD (*Tcheuma v Canada (Citizenship and Immigration)*, 2022 FC 885 at para 27; *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 24; *Ogunmodede v Canada (Citizenship and Immigration)*, 2022 FC 94 at paras 23-30; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1692).

[26] This has also been the case where an applicant raises an argument based on the principle in *Ali* for the first time in judicial review (*Kodom v Canada (Citizenship and Immigration)*, 2023 FC 305 at paras 5, 11-14; *Singh v Canada (Minister of Citizenship and Immigration)*, 2023 FC 875 at paras 23-60; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1081 at para 11; *Kumar v Canada (Citizenship and Immigration)*, 2023 FC 839 at paras 5, 18-19, 29).

## III. Conclusion

[27] For the foregoing reasons, this application for judicial review is dismissed. Given the record before it, the RAD's decision bears the required hallmarks of reasonableness - justification, transparency and intelligibility. No question for certification was proposed, and I agree that none arises.

## JUDGMENT in IMM-6636-22

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

1. The Applicant's application for judicial review is dismissed;
2. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper Respondent; and
3. No question of general importance is certified.

"Vanessa Rochester"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6636-22 |
| **STYLE OF CAUSE:** | SANDEEP SINGH BHULLAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | AUGUST 16, 2023 |
| **JUDGMENT AND REASONS:** | ROCHESTER J. |
| **DATED:** | AUGUST 24, 2023 |

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| Sean Doyle | FOR THE RESPONDENT |

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