Federal Court  Cour fédérale

Date: 20230825

Docket: IMM-5183-22

Citation: 2023 FC 1151

Ottawa, Ontario, August 25, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

KULDEEP SINGH
CHARANJEET KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Kuldeep Singh and Charanjeet Kaur, are spouses and citizens of India. They seek judicial review of a judicial review of a decision by the Refugee Appeal Division [RAD], dated April 25, 2022, dismissing their appeal and confirming the decision of the Refugee Protection Division [RPD] rejecting their claim for refugee protection, finding that they are

neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The Applicants alleged that they fear the Punjab police who suspect Mr. Singh of having links to militants following his anti-drug activism. The RAD concluded that the RPD was correct to find that the Applicants have a viable internal flight alternative [IFA] in Mumbai or Delhi.

[3] The Applicants submit that the RAD's decision is unreasonable on the basis that the RAD erred (i) in failing to take into account relevant evidence in the National Documentation Package [NDP] with respect to the Crime and Criminal Tracking Network and Systems [CCTNS] database; (ii) by failing to take into account that the Applicants face a real possibility of being located through the CCTNS and the tenant verification program, given the Punjab police reply quickly to such checks; and (iii) by unreasonably concluding that the Applicants' family and friends could simply continue to tell the police, "whatever they have been telling them".

[4] The Respondent submits that the RAD reasonably concluded, based on the record before it, that (i) the Applicants' names have not been recorded in the CCTNS given the arrest was likely extrajudicial; and (ii) there was insufficient evidence that the Punjab police had the means or motivation to track the Applicants in the IFA, including through their families.

[5] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicants have failed to persuade me that the

RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Issues and Standard of Review

[6] The issue in the present proceeding is whether the RAD's decision that the Applicants have a viable IFA is reasonable. The Applicants have focused on three sub-issues, namely: (i) the RAD's treatment of the documentary evidence in the NDP; (ii) the RAD's alleged failure to account for the evidence in the NDP relating to the verification systems in India; and (iii) the RAD's finding that there was no serious possibility that the police would track the Applicants through their families.

[7] The applicable standard of review is reasonableness as set out in Canada (*Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). It is the Applicants, the parties challenging the decision, who bear the onus of demonstrating that the RAD's decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court 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" (*Vavilov* at para 100).

[8] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the

weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125). A reasonableness review also is not a "line-by-line treasure hunt for error," the reviewing court simply must be satisfied that the decision maker's reasons "add up" (*Vavilov* at paras 102, 104).

III. Analysis

[9] The determinative issue for both the RPD and the RAD was the existence of a viable IFA. It is the Applicants who bear the burden of demonstrating that a proposed IFA is not viable. 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; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17).

[10] With respect to the first sub-issue, the Applicants have highlighted a number of passages from the NDP, including evidence that the CCTNS has already e-integrated the vast majority of the police stations across the country permitting law enforcement agencies to "access criminal record and history of a person from any police station in the country." The Applicants submit that the RAD failed to address contradictory documentation in the NDP thus rendering the decision unreasonable, relying on *Cepeda-Gutierrez v Canada (Citizenship and Immigration),* [1999] 1 FC 53 at paragraph 17. They argue that the RAD erroneously concluded that they could not be tracked by the Punjab police, despite the fact that they took Mr. Singh's fingerprints, photos and forced him to sign blank papers.

[11] The Respondent highlights other extracts from the NPD, notably evidence that the Executive Director confirmed that extrajudicial arrests are not captured in the official criminal databases, including CCTNS. The Respondent underscores that there was no evidence of any formal charges, First Information Reports, alerts, summons, or arrest warrants. The Respondent submits that given the Applicants did not challenge the RPD's finding that the arrests were extrajudicial before the RAD, it is improper to raise it now.

[12] Having considered the NDP sources that the parties have referred me to, I am not persuaded that the RAD failed to address contradictory documentation in the NDP such that the RAD's decision becomes unreasonable. I agree with the Respondent that the RAD was entitled to prefer documentary evidence that was more recent and more detailed than the excerpts relied upon by the Applicants. It is not for this Court, absent exceptional circumstances, to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125). The RAD

considered the Applicants' arguments as to the CCTNS and provided intelligible and justified reasons as to why it found that there was insufficient information to conclude that the Applicants' names appear in any police database. I see no error that warrants this Court's intervention.

[13] As to the second sub-issue, namely the Applicants' argument on the tenant verification system, it is predicated upon the Applicants' allegation that their information appears in the CCTNS. Given my finding that the RAD did not commit a reviewable error in its analysis of the CCTNS, the Applicants cannot therefore succeed on this point.

[14] I turn now to the final sub-issue, the Applicants' submission that the RAD unreasonably concluded that there was no serious possibility that the police would track the Applicants through their families. The Applicants submit that it is unreasonable to expect their families to lie to the police and to not be able to share their location with family and friends is tantamount to hiding – thus making any potential IFA unreasonable. The Applicants rely on this Court's decisions in *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 at paragraphs 49 and50 [*Ali*], *AB v Canada (Citizenship and Immigration)*, 2020 FC 915 at paragraphs 20 to 22, and *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586 at paragraph 29. The Applicants further submit that the RAD erred in stating that "if the [Applicants] did allege that the police continue to ask about their whereabouts, there is no reason why the [Applicants'] families could not continue to tell the police whatever they have been telling them when they ask about the [Applicants]."

[15] The Respondent submits that the RAD's decision was reflective of the record before it in that the Applicants provided very little evidence and scant details as to what happened. During the hearing, the Applicants simply stated that they were told that the police were harassing family members and looking for them. The affidavits from Mr. Singh's father and an acquaintance simply stated that the police came and harassed them and asked about the Applicants. There were no further details and no indication whatsoever in the evidence as to what the family members actually told the police. As such, the RAD did not err in referring to "whatever they have been telling them" because the Applicants never provided evidence as to what their families told the police, ergo the RAD did not know. Furthermore, the Respondent distinguishes the cases relied upon by the Applicants on the basis that, in the present case, the RAD concluded on the evidence that the police did not have the motivation to track the Applicants, and this is determinative.

[16] I agree with the Respondent that the RAD's conclusions are reflective of the evidence and the record before it. The RAD concluded that the evidence supported the RPD's conclusion that the Punjab police would likely not have the motivation to track the Applicants down and persecute them in the IFA cities. The RAD rejected the Applicants' assertion that the Applicants would be forced to live in hiding and cease to have interactions with their families as that was not borne out by the evidence before it. In fact, the Applicants' submissions on this point by counsel before the RAD (not counsel on this application) constituted simply one sentence to the effect that they cannot be forced to hide from their families and cease interactions with them. While the RAD could have worded the sentence quoted by the Applicants above differently, I have not been persuaded that this rises to the level of a reviewable error.

[17] As to the three cases cited by the Applicants, the holdings in these cases are fact-specific and cannot be generalized to every IFA situation. They are distinguishable on the basis that in those cases there was sufficient evidence that the agents of persecution had the motivation to locate the claimants. The Punjab police's mere knowledge of the whereabouts of the Applicants, assuming the families would disclose it, does not establish a serious possibility of persecution or risk in the proposed IFA cities if the Punjab police have neither the means nor the motivation to act on it.

[18] I find that Justice Nicholas McHaffie's comments in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 [Singh] are equally applicable to the case at hand. In *Singh*, the applicants relied on *Ali* to argue that they would be forced to hide from family and friends. Justice McHaffie concluded as follows:

> [24] …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

[19] I have not been persuaded that the RAD erred as alleged by the Applicants. The RAD's findings on the two IFA cities 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). The RAD considered the evidence put forward by the Applicants and the resulting decision was reflective of the submissions made to the RAD and the record before it. I find no basis upon which to intervene. Consequently, this application for judicial review is dismissed.

[20] No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-5183-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' application for judicial review is dismissed; and

2. There is no question for certification.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5183-22
STYLE OF CAUSE:	KULDEEP SINGH ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	AUGUST 24, 2023
JUDGMENT AND REASONS:	ROCHESTER J.
DATED:	AUGUST 25, 2023

APPEARANCES:

Nilufar Sadeghi	FOR THE APPLICANTS
Eloïse Eysseric	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Me Nilufar Sadeghi Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT