Federal Court

Cour fédérale

Date: 20230907

Docket: IMM-5226-22

Citation: 2023 FC 1211

Ottawa, Ontario, September 7, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

UNKNOWN HARPINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review, pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision [the Decision] of the Refugee Appeal Division [RAD] confirming the determination of the Refugee Protection Division [RPD] that he is not a Convention refugee nor a person in need of protection, because of a finding of Internal Flight Alternative [IFA] in New Delhi or Mumbai.

[2] 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 discharge his burden and demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Factual Background

[3] The Applicant is a citizen of India, from the region of Punjab. He fears persecution at the hands of the Punjab police because they have accused him of being associated with militants of the Aam Aadmi Party [AAP], an opposition party in India.

[4] In 2016, the Applicant's brother participated in activities of the AAP. The police subsequently alleged that the Applicant's brother had joined the militants, resulting in the Applicant's brother and his wife fleeing their home area in August 2017, and then eventually fleeing to Canada in December 2017.

[5] On December 20, 2017, an individual named Pritam Singh [Pritam], whom the police also suspected to be a militant, came to the Applicant's house with a friend to request shelter and money. The Applicant agreed to provide them with shelter for one night, as he was scared of them. Pritam and his friend left the Applicant's house early the next morning.

[6] The next day, on December 21, 2017, the police raided the Applicant's house. They arrested the Applicant and brought him to the police station to question him about the militants and Pritam. The police tortured the Applicant, beating him until he fainted.

[7] Two days later, on December 23, 2017, the Applicant was released after his village arranged to pay the police a bribe of 75 000 rupees. Before his release, the police allegedly took the Applicant's fingerprints and his signature on blank pages, as well as photographs. They asked the Applicant to report to the police station on the first day of every month starting February 1, 2018.

[8] In January 2018, the Applicant left his home to stay with relatives in a different region.

[9] In February 2018, the Applicant's house was raided again by the police. After the raid, the Applicant travelled to New Delhi to meet with a travel agent and obtain a Canadian visa.

[10] On August 3, 2018, the Applicant travelled to Canada, filing his refugee claim in September 2018.

[11] On November 19, 2021, the Applicant appeared before the RPD and on December 17, 2021, the RPD rendered its decision rejecting the Applicant's refugee claim, because of a determinative finding of IFA in New Delhi or Mumbai.

III. Decision under review

[12] On May 10, 2022, the RAD dismissed the Applicant's appeal, confirming the RPD decision that he is not a Convention refugee nor a person in need of protection. Applying the two-pronged IFA test, the RAD agreed with the RPD that the Applicant had a viable IFA in New Delhi and Mumbai.

[13] On the first prong of the test, the RAD determined that there is no serious possibility of persecution, and it is not likely that the Applicant would face a risk to life, of cruel and unusual treatment or punishment in the proposed IFAs, because it was unlikely that the Punjab police had the means or motivation to track the Applicant in Mumbai or New Delhi. On the second prong of the test, the RAD found that it would not be objectively unreasonable for the Applicant to relocate to these cities given his personal circumstances, including his age and level of education.

[14] The Applicant now seeks judicial review of this decision. He does not dispute the RAD's finding on the second prong of the IFA test.

IV. Issues

[15] The Applicant argues that the Decision is unreasonable because the RAD erred in finding that he would not be at risk of persecution from the Punjab police in New Delhi or Mumbai, under the first prong of the IFA test.

[16] The standard of review for the Decision is reasonableness (*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 party challenging the decision, who bears 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).

[17] 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).

V. Analysis

[18] The test to determine if an IFA is viable in the claimant's country is set out in *Rasaratnam v Canada (Minister of Employment and Immigration),* [1992] 1 FC 706, 1991 CanLII 13517 (FCA) at paragraph 10. The test is two-pronged: the claimant has an IFA when (1) they will not be subject to a serious possibility of persecution nor to a risk of harm under subsection 97(1) of the IRPA in the proposed IFA location, and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances. Both prongs must be satisfied in order to make a finding that a claimant has an IFA. (*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). It is the applicant who bears the burden of demonstrating that the proposed IFAs are not viable.

[19] The Applicant has not discharged his burden to demonstrate that the RAD's decision is unreasonable. The Applicant has not established that the Punjab police would have the capacity and the motivation to locate him within the proposed IFAs.

[20] The Applicant raises four main issues with the RAD's analysis of the first prong of the IFA test. First, the Applicant argues that the RAD did not understand how the tenant verification process works. The Applicant states that the Punjab police will be able to find him in Mumbai because the Mumbai police might contact the Punjab police to proceed with a verification of the Applicant's information when he finds a new tenancy.

[21] During the hearing, the Applicant emphasized that because the Crime and Criminal Tracking Network and Systems [CCTNS] and tenant verification process is more efficient in Punjab than elsewhere, the Mumbai police might seek to verify the Applicant's information with the Punjab police, giving them the capacity to locate him in Mumbai. The Applicant explained that because there is no centralized system within the country of India, the different police stations across the regions would call each other to exchange that information. The same issue would therefore arise in any potential IFA.

[22] Second, the Applicant argues it was unreasonable for the RAD to conclude that the Punjab police did not have the motivation to pursue him, because the RAD found his arrests, detention and torture by the Punjab police to be credible.

[23] Third, the Applicant argues the RAD did a selective reading of the evidence, because parts of the documentary evidence referred to by the RAD was contradictory to the RAD's findings (relying on *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigrgation,* 1998 CanLII 8667 [*Cepeda-Gutierrez*] at para 17). For example, the Applicant submits that the RAD held that the Punjab police had no motivation to find him because no First Information Report [FIR] was ever filed against him. However, the documentary evidence referred to by the RAD also mentions that a FIR or warrant is not needed to arrest the Applicant and that the CCTNS contains a history of any individual from any police station. Therefore, since the Punjab police did take down his information, as well as photographs and fingerprints when he was arrested, the RAD's finding that the Punjab police had no motivation to find him because no FIR was filed is unreasonable.

[24] Lastly, the Applicant argues that both the RPD and the RAD accepted that the Punjab police were still searching for the Applicant to this day, at his family home and his neighbours' home. The Applicant submits that this Court has held that it is unreasonable to expect family members to place their own lives in danger by having to deny knowledge of the Applicant's whereabouts or deliberately mislead the authorities (relying on *A.B. v Canada (Citizenship and Immigration)*, 2020 FC 915 [*A.B.*] at paras 20-24, 26; *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*] at paras 49-50; *Bhuiyan v Canada (Citizenship and Immigration),* 2023 FC 410 at paras 27, 49). The Applicant contends that not being able to share his location with his family and friends is tantamount to "hiding" and makes any potential IFA unreasonable.

[25] In my view, the findings of the RAD are not unreasonable. The RAD (and RPD before it) both acknowledged that there appeared to be an infrastructure in place that would allow the police to track individuals. However, the RAD found that there was insufficient evidence that demonstrated that the Applicant’s name would be within that database and that the Punjab police would have the motivation to track him down in the proposed IFAs.

[26] As argued by the Respondent, the evidence rather demonstrates that the Punjab police does not seriously consider the Applicant as a militant since he was released upon payment of a bribe, and that the Applicant was not charged with a crime.

[27] The RAD’s finding that it is unlikely that the Applicant’s information has been recorded in a database available to the police is therefore reasonable considering the circumstances and nature of his arrest (para 42 of Decision). The RAD also relied on objective evidence (NDP for India, Items 10.1, 9.6, 9.8 and 9.9) that states that the police will deliberately omit to register any detention when they seek to evade scrutiny and legal obligations, such as this case where the police accepted a bribe.

[28] Further, the RAD’s conclusion that the police in Mumbai and New Delhi, while having structures in place, do not have enough police resources to verify the identify of all new tenants in their regions is reasonable, and there is no evidence that the police from Mumbai or Delhi would contact the Punjab police to verify the Applicant’s information.

[29] The Applicant also pointed the Court to contrary evidence to that effect in the NDP. I have reviewed the NDP sources that were cited by the Applicant (including NDP India, Items 10.6, 14.8 and 10.13) and conclude that those sources do not contradict the RAD's findings. Consequently, the RAD's failure to specifically refer to these sources and explain why they were dismissed does not represent a failure by the RAD to specifically consider contradictory documentation thereby giving rise to the intervention of the Court (*Cepeda-Gutierrez* at para 17). Instead, the RAD examined the objective documentation and relied on some documentary evidence in preference to other excerpts, as it was entitled to do.

[30] As held by Justice Rochester in *Singh v Canada (Citizenship and Immigration),* 2023 FC 1151 [*Singh* 2023 FC 1151], the RAD was entitled to make such a finding:

> [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.

[31] The RAD was also reasonable in its finding that the Applicant's name should not be in the CCTNS database by relying on objective evidence to the effect that "interstate police communication to locate an individual will only occur in cases of major crimes such as smuggling, terrorism, and some high-profile organized crime cases, which is not the case here"

(Decision at para 31). This conclusion is reasonable given that the evidence does not demonstrate that the Applicant was charged with any crime.

[32] Finally, the Applicant argues that even though his family members in Punjab were not "threatened" by the police, the simple fact that they were questioned by the Punjab police to know when he would be back to India results in no IFA being viable. The Applicant relies on *Bhuiyan* at paras 27, 49; *A.B.* at paras 20-23; *Zamora Huerta v Canada (Citizenship and Immigration),* 2008 FC 586 [*Zamora Huerta*]; and *Ali*; and argues that his family should not be expected to lie and put their life in danger when they are visited by the agents or persecution.

[33] With respect, these cases are distinguishable. In *Bhuiyan*, *Zamora Huerta, A.B.,* and *Ali*, there was evidence that the applicants' relatives would be in danger if they lied to the persecutors about the applicant's whereabouts. There was also evidence that the persecutors also had the capacity and willingness to pursue the applicants in their new locations based on the acquired information.

[34] In this case, and as argued by the Respondent, the fact that the Punjab police is willing to locate the Applicant within his own village does not demonstrate that they would be motivated and capable to locate him outside of the state of Punjab, which is what the Applicant has to demonstrate to meet the IFA test (*Singh* 2023 FC 1151 at paras 15-16).

[35] As held by my colleague Justice Rochester in *Singh* 2023 FC 1151, "the holdings in these [three cited 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" (at para 17).

[36] I also agree with the Respondent that as held in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 [*Singh* 2023 FC 996] at paragraph 24, the fact that an agent of persecution acquires knowledge of a claimant's whereabouts does not establish a risk if the agent is unable or unwilling to act on it. Indeed, in *Singh* 2023 FC 996, the applicants relied on *Ali* to argue that they would be forced to hide from family and friends. Justice McHaffie held that:

> [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.

[37] Likewise, in this case, even if the Punjab police were able to determine the Applicant's location by questioning his family, there remains no evidence that the Punjab police has the motivation or capacity to find him in the proposed IFAs.

[38] Consequently, the Applicant has not discharged his burden to demonstrate that the RAD erred. The RAD's reasoning as to why the Applicant has a viable IFA in the proposed IFAs is intelligible, transparent and justified (*Vavilov* at paras 15, 98). The RAD's findings on the potential IFAs are factual, based on the evidence and the arguments presented by the parties. I therefore find no basis upon which to intervene (*Singh* 2023 FC 1151 at para 19).

VI. Conclusion

[39] For the reasons outlined above, the RAD's Decision is reasonable. The judicial review is therefore dismissed.

[40] The Parties proposed no question of general importance for certification, and I agree that none arise.

JUDGMENT in IMM-5226-22

THIS COURT'S JUDGMENT is that:

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

2. There is no question for certification.

"Guy Régimbald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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