

Federal Court



Cour fédérale

Date: 20231117

Docket: IMM-11558-22

Citation: 2023 FC 1526

Ottawa, Ontario, November 17, 2023

PRESENT: Madam Justice Walker

BETWEEN:

AMRIT PAL SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Singh, is a citizen of India who fears persecution from the police in Chandigarh (Punjab), the relatives of a woman to whom he provided assistance and shelter during her inter-caste marriage, and a local Panchayat. Four incidents precipitated the Applicant's 2019 departure from India for Canada:

- (1) The Applicant lived in Chandigarh, where he ran a transportation business. In January 2019, the local police found a suspected terrorist in one of his vans. The police questioned the Applicant about whether he knew the individual but did not arrest him. He was later asked to identify individuals in a line-up.

- (2) In March 2019, the Applicant provided employment and accommodations to an inter-caste couple from Rewari (Haryana). Shortly thereafter, the husband returned to Rewari to attempt to reconcile with his wife's family who strongly disapproved of the marriage. The couple returned to Rewari but the husband was killed in June 2019.
- (3) Neighbours began to accuse the Applicant of having had an affair with the wife of the couple. In August 2019, her uncle made similar accusations and the Applicant moved to a different home in Chandigarh. The same month, a complaint regarding the affair was made to the local Panchayat.
- (4) In September 2019, the police in Chandigarh took the Applicant into custody after the Rewari police made contact and informed the Chandigarh police about the Applicant's assistance to the couple and his affair with the wife. The Applicant was detained for 24 hours and beaten. He signed blank papers and the police took his photograph and fingerprints.

[2] Upon his release from custody, the Applicant travelled to Delhi and from there left for Canada with the assistance of an agent.

[3] The Applicant sought refugee protection in Canada but the Refugee Protection Division (RPD) refused his claim. The RPD found that the Applicant has an internal flight alternative (IFA) in Bengaluru, India and concluded that he is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*.

[4] The Applicant appealed the RPD's decision to the Refugee Appeal Division (RAD). He argued that the RPD erred in its analysis of the capacity of his agents of persecution to find and harm him in the proposed IFA. The Applicant claimed that his persecutors remain motivated and are able to locate him throughout India because he aided the inter-caste couple, engaged in an affair, and is suspected of having terrorist associations (due to the van incident).

[5] The RAD reviewed the RPD's decision, the evidence and the transcripts of the RPD hearing but confirmed the IFA determination in a decision dated October 20, 2022. Following its analysis of the appeal arguments, the RAD agreed with the RPD that the Applicant had not established that his agents of persecution, notably the police, are motivated or able to locate him in Bengaluru, or that it would be unreasonable in the circumstances for him to seek refuge there.

[6] In this application for judicial review, the Applicant focussed his arguments on the RAD's analysis of the first prong of the IFA test. The panel's findings in this regard were:

- The Applicant was not arrested in January 2019 following the discovery of a suspected terrorist in one of his business vans.
- The evidence regarding the verbal complaint against the Applicant pursuant to section 107 of the Indian Penal Code is unclear and inconsistent. This finding included reference to Applicant's testimony and his lawyer's letter dated April 21, 2022. More likely than not, the complaint related to the Applicant's assistance to the inter-caste couple and his resulting affair; not to the van incident. There was insufficient evidence to find that the Applicant was charged with rape despite mention of the offence in the lawyer's letter. It is not likely that the complaint was registered in the Indian Crime and Criminal Tracking Network Systems (CCTNS).
- The communication between the police in Rewari and Chandigarh is not evidence of interstate communication through CCTNS. The communication followed a complaint by the wife's family. There was insufficient evidence that police forces other than the force in Chandigarh would pursue the complaint. The lawyer's letter indicated that there was pressure to arrest the Applicant from the Panchayat and local residents but no reference to pressure on the police in Bengaluru.
- The tenant verification system (TVS) will not likely lead the agents of persecution to the Applicant. The TVS is linked to the CCTNS and is not a reliable system.
- The Applicant is not in the same position as the husband of the inter-caste couple. The husband's death occurred in Haryana where the wife's family lived, the Applicant's relationship with the wife was more limited and he would be living in a different location upon his return to India.
- The Applicant's risk is localized. There is no evidence that police in Bengaluru are interested in the Applicant or that they would search for him. It is also not likely that the wife's family in Haryana could influence the Bengaluru police.

I. Analysis

[7] The RAD's reasons and conclusions regarding the availability of an IFA in India are reviewed on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32).

[8] The concept of an IFA is integral to the definition of a Convention refugee because a claimant must be a refugee from a country, not from a particular region of a country. The IFA test has two prongs: is there a serious possibility of persecution or a section 97 risk in the proposed IFA, and is it reasonable for the claimant(s) to relocate there? (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at para 13 (CA)).

[9] The Applicant submits that the RAD unreasonably assessed the evidence in the record and failed to consider the cumulative risks posed to him by the three agents of persecution in light of their suspicions and allegations of terrorist links and adultery. In the Applicant's view, if considered together, the risks he faces in India establish a serious possibility of persecution in the IFA and the RAD's conclusion to the contrary is not reasonable.

[10] The Applicant's primary challenge to the RAD's decision is that the panel ignored a critical part of the evidence: the Applicant's suspected association with terrorists, as noted in the 2022 lawyer's letter and the April 26, 2022 affidavit of Onkar Singh, a former landlord. The Applicant emphasizes the very serious nature of the suspicion because it heightens the likelihood that the police in Bengaluru will be motivated and able to find, arrest and harm him.

[11] The Applicant relies first on an introductory sentence in his lawyer's letter. Outlining their involvement and knowledge of the Applicant's situation in India in 2019, the lawyer stated, "At that time Police informed me that the police have doubts that Amrit Pal Singh has links and provided shelter to the Terrorists". The lawyer also stated that the Panchayat had accused the Applicant of adultery and of providing support to criminals. The remainder of the letter addressed the complaint made against the Applicant which the lawyer appears to conclude focussed on adultery and, possibly, abetment of criminals. Second, the former landlord in Chandigarh stated in his affidavit that he was called into the local police station in 2020 because the police were looking for the Applicant "for not respecting the orders, having his links with Terrorists, having sexual relationships with a married woman who was accused of inter-caste marriage by her tribe [...]".

[12] The Applicant's reliance on the existence of a suspicion of terrorism is not persuasive. To paraphrase the RAD's assessment of the lawyer's letter, it is obtuse. The RAD considered the letter closely. The letter refers to abetment and to the crime of rape in relation to a complaint against the Applicant but the RAD concluded that the reference to rape was inconsistent with the Applicant's claim that he was falsely accused of having had an affair. Any complaint made against the Applicant was a verbal complaint regarding the Applicant's support of the inter-caste couple. The RAD did not use the term "terrorists" in describing the content of the letter but the panel did assess the letter in the context of the van incident. The panel concluded that the incident had not been documented and stated that the evidence before it established that the Applicant had been helping the police following the incident. I find no reviewable error in the Decision in this regard. In the affidavit, the former landlord mentions only being told that the

police were searching for the Applicant in 2020 in Chandigarh based on his failure to respect the police orders, links with terrorists and adultery. The RAD's failure to assess the affidavit reflects the affidavit's sparse content.

[13] The suspicions mentioned in the letter and affidavit are not consistent with the Applicant's evidence that the police asked him to assist in identifying individuals involved in the van incident. The RAD stated:

[31] [...] In addition, the incident in September 2019 is not evidence of interstate communication via CCTNS. It is not a case that the Appellant was in a different state and the police in a different state found out about a complaint through CCTNS. Rather, the evidence is that the Applicant was helping the police and did not have issues with the police regarding the van incident until the family complained to the Haryana police who in turn contacted the Punjab police. [...]

[14] I find that it was open to the RAD to characterize the police interest in the Applicant as involving adultery and some link with criminals due to the van incident. The RAD referred to the Applicant's own statement that he is "considered to be a terrorist" but the evidence simply does not support his claim. The RAD painstakingly reviewed each precipitating incident and the Applicant has identified no factual error in the RAD's decision.

[15] The Applicant also takes issue with the RAD's consideration of his risk of harm due to his adultery. He states that his position is analogous to that of the husband who was killed in Rewari.

[16] The RAD addressed this aspect of the Applicant's evidence but concluded that he was not in the same position of the husband. The RAD stated that the husband's death occurred in Haryana, where the wife's family was located, and that the Applicant's involvement with the wife was more limited. The Applicant's belief in his risk of death does not establish a reviewable error in the Decision.

[17] The Applicant emphasizes more generally that communication between police stations has been established. The RAD agreed. However, the panel found that the request for assistance from the police in Rewari was prompted by the wife's family. The RAD makes this clear in the explanation cited above. The Chandigarh police were not actively looking for the Applicant. They followed up on the Rewari request because they knew where the Applicant lived. The communications between the two forces did not suggest that further communication outside of the two states would likely be pursued.

[18] The RAD reviewed the entirety of the Applicant's evidence and arguments. The panel considered the three agents of persecution and their relationship to each other. The RAD listed the four incidents that led the Applicant to leave India but did not conduct its analysis in silos. The decision reflects a comprehensive consideration of all of the Applicant's evidence and fears, and provides a clear path to the RAD's ultimate conclusion of a viable IFA in Bengaluru.

[19] The RAD did not question the Applicant's credibility and acknowledged there may remain local motivation to locate the Applicant on the part of the wife's family and Panchayat, and, as a result, the Rewari/Chandigarh police. Nevertheless, the RAD committed no reviewable

error in concluding that the Applicant had filed insufficient evidence to establish a serious possibility that the police in Bengaluru would persecute against him. The evidence did not support the existence of a criminal charge against the Applicant, whether serious or otherwise, and there was no evidence that his personal information had been entered into the CCTNS. Any association with terrorists arose in connection with the van incident and does not appear to have progressed other than the requests for assistance made to the Applicant while he was living in Chandigarh. The Applicant's statement that his information may be in the CCTNS is speculative. As claimant, the Applicant bore the onus of establishing that he does not have a viable IFA (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at p 594-595 (CA)).

II. Conclusion

[20] In summary, the RAD assessed the Applicant's evidence and submissions against the accepted test for a viable IFA. The RAD did not overlook evidence or minimize contradictory evidence in the record. I find that the RAD reasonably considered each incident, the cumulative impact of the events of 2019 and the resulting local interest in the Applicant. The panel's analysis and conclusions regarding the lawyer's letter is balanced and fully reflects the ambiguous content of the letter. Accordingly, I find that the RAD's decision is intelligible and justified in a manner that responds to the review framework established by the SCC in *Vavilov*. The application will be dismissed.

[21] No question for certification was proposed by the parties and none arises in this case.

[22] The proper respondent in this matter is the Minister of Citizenship and Immigration and the style of cause is amended accordingly (paragraph 5(2)(b) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 and subsection 4(1) of the *IRPA*).

JUDGMENT IN IMM-11558-22

THIS COURT'S JUDGMENT is that:

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

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11558-22

STYLE OF CAUSE: AMRIT PAL SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUÉBEC

DATE OF HEARING: OCTOBER 11, 2023

JUDGMENT AND REASONS: WALKER J.

DATED: NOVEMBER 17, 2023

APPEARANCES:

M^e Miguel Mendez FOR THE APPLICANT

M^e Éloïse Eysseric FOR THE RESPONDENT

SOLICITORS OF RECORD:

Étude Légale Stewart Istvanffy FOR THE APPLICANT
Barristers and Solicitors
Montréal, Québec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Québec