Federal Court  Cour fédérale

Date: 20240308

Docket: IMM-3633-23

Citation: 2024 FC 399

Ottawa, Ontario, March 8, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

MALKEET SINGH VIRK AND AMANDEEP KAUR VIRK

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Malkeet Singh Virk [Principal Applicant] and Amandeep Kaur Virk [together, the Applicants], married Sikh citizens of India, seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dated January 28, 2022 [Decision]. The RAD dismissed their appeal and confirmed the Refugee Protection

Division [RPD] decision denying their refugee claim. The refugee protection claims under sections 96 and 97 of the *Immigration and Refugee Protection Act,* SC 2002 s 27 [*IRPA*] were denied because the Applicants have Internal Flight Alternatives [IFA] in Mumbai, Raipur, or Ludhiana.

[2] The Applicants argue that the RAD erred in its IFA analysis by ignoring key evidence of adverse country conditions for India, and by failing to consider the Applicants' cumulative risk profile as Sikh political activists.

[3] For the reasons that follow, I dismiss this application for judicial review. Based on the evidentiary record, the parties' written and oral submissions, and the applicable law, I have not been persuaded that the Applicants have met their onus to demonstrate that the RAD's finding of an IFA was unreasonable.

II. Background

A. *Facts*

[4] The Applicants arrived in Canada at the Toronto Pearson International Airport in 2020, and initially advised the Canada Border Services Agency [CBSA] authorities that they were arriving for tourism purposes. The Applicants subsequently advised the CBSA authorities that they could not go back to India because it would be "shameful to return without seeing Canada," that "people will laugh at us that look how fast they came back from their trip." After being advised they would not be allowed to proceed on their trip, the Applicants made refugee claims.

[5] The Applicants allege they will be targeted in India because they are Sikh and the Principal Applicant participated in political protests in 2017. It was this involvement in protests that they allege attracted the attention of the police and "people with influence" in India.

[6] The Applicants provided information in their Basis of Claim [BOC] forms that they are both practitioners of the Sikh faith and experienced violent attacks in India due to their religion and political involvement. They stated that the Principal Applicant, actively participated in protests aimed at benefiting Sikh families in their village and subsequently attracted the attention of the police and people with influence in India who want to harm them. They listed one protest in February 2017. They indicated they were subsequently targeted by the Hindu community for the past few years. The Applicants also wrote that the main reason the government is not helping was because he participated and headed many protests against them.

[7] The Applicants described attacks in July 2018 when they were shopping attributing the attack to "previous enmity" with no further details, and that "a few years back," the Principal Applicant survived a religious clash and a property dispute during which "a few of our Sikh people" were murdered. The Principal Applicant described being attacked in June 2019 by his neighbour, who is Hindu and wanted to take over his land.

[8] The Applicants indicated that they would not be safe in any locations because the agents of persecution have influence and have people all over their state. They sought help from the authorities many times, but the police are hesitant and do not take action. The Principal Applicant identified a land dispute with his brother, who is a high-ranking police officer and who

will not help due to this land dispute. The Principal Applicant also indicated if he left his property, he would likely lose it to the "next land owner who is Hindu," and that they were not ready to leave the land to someone else as "they are sentimentally attached" to it. The Applicants moved to Barnala, Punjab in 2015, but returned to their hometown to "safeguard my family property."

[9] In January 2020, the Applicants indicated that through their friends, "they decided to kill me and I was left with no places to hide" and two attempts were made against him but he was able to escape from the attempts. The Applicants decided to leave the country so they hired an agent and arrived in Canada in March 2020. Before leaving Canada, the Applicants indicate they tried to hide and that they feel the Hindu majority will not hesitate to take revenge and there is every possibility for him to be arrested.

[10] The RPD found that the Applicants' claims failed because they both had a valid IFA in Mumbai, Raipur or Ludhiana. As a result, the RPD determined that the Applicants were not Convention refugees and that they are not persons in need of protection.

[11] On appeal, the Applicants did not request the admission of any new evidence and did not seek an oral hearing at the RAD. The Applicants submitted that the RPD erred by basing its decision on irrelevant considerations and by ignoring the facts of the evidence. The RAD considered the evidence submitted at the RPD hearing as well as the transcript of the hearing. The RAD conducted their own analysis, but in conclusion, agreed with the RPD that the Applicants had viable IFA and had not demonstrated that the IFA identified were unreasonable.

III. Issues and Standard of Review

[12] The parties agree that the sole issue before the Court is whether the RAD's Decision was reasonable and that the applicable standard of review is reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. I agree that this is the appropriate standard to be applied in this case.

[13] A reviewing court does not ask what decision it would have made in place of that of the administrative decision maker. It is "an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers" (*Vavilov* at para 13).

[14] A reviewing court does not attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis, or seek to determine the "correct" solution to the problem (*Vavilov* at para 83).

[15] The decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125).

[16] A reasonable decision is one based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85).

[17] The onus is on the party challenging the decision to show that the decision is unreasonable (*Vavilov* at para 100).

IV. Relevant Law

[18] The following provisions of the *IRPA* are applicable in this proceeding:

> **Convention refugee**
>
> **96** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
>
> (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
>
> (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.
>
> **Person in need of protection**
>
> **97** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
>
> (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

> (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
>
> (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
>
> (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
>
> (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
>
> (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.
>
> **Person in need of protection**
>
> **(2)** A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

[19] An IFA is "inherent in the definition of a Convention refugee" (*Rasaratnam v Canada (MCI)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (CA) [*Rasaratnam*] at 710). A Convention refugee and a person in need of protection must be found to face the identified risk in every part of their country of origin. A viable IFA, if found to have met both prongs of the IFA test, will negate a claim for refugee protection under either section 96 or 97, regardless of the merits of other aspects of the claim (*Olusola v Canada (MCI)*, 2020 FC 799 at para 7).

[20] The test for finding a viable IFA test requires a claimant to satisfy two criteria on a balance of probabilities. First, there must be no serious possibility of a claimant being persecuted in the part of the country to which it finds an IFA exists. Second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances including

circumstances particular to him, for the claimant to seek refuge there (*Rasaratnam* at paras 709-711 and *Thirunavukkarasu v Canada (MCI)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*] at paras 592, 597).

[21] Both *Rasaratnam* and *Thirunavukkarasu* held that the tribunal must be satisfied, on a balance of probabilities, that there is no serious possibility of the Applicant being persecuted in the proposed IFA (*Rasaratnam* at para 13). A serious possibility of persecution can only be found if it is demonstrated that the agents of persecution have the probable means and motivation to search for an applicant in the suggested IFA (*Saliu v Canada (MCI*), 2021 FC 167 at para 46 citing *Feboke v Canada (MCI)*, 2020 FC 155 at para 43).

[22] The tribunal must also be satisfied that, in all the circumstances, including the Applicants' particular circumstances, the conditions in the proposed IFA are such that it is not unreasonable for the Applicants to seek refuge there (*Ranganathan v Canada (MCI)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) [*Ranganathan*] at para 15). The threshold to establish unreasonableness is very high, requiring "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area" (*Ranganathan* at para 15).

[23] The applicant bears the onus of refuting the reasonability of the IFA, taking into account their particular situation and the country involved (*Thirunavukkarasu* at 597).

V. Analysis

[24] At the hearing, the Applicants presented two primary arguments:

A. The RAD failed to grapple with evidence that contradicted other evidence they relied upon and cited in making their determinations; and,

B. The RAD failed to consider the Principal Applicant's "cumulative risk profile" as both a Sikh and an avid protestor.

[25] Although these arguments were presented as separate arguments, I understand them to address different aspects of both prongs of the *Rasaratnam* test. Specifically, the RAD's failure to grapple with contradictory evidence throughout their IFA analysis constitutes a reviewable error. Second, the Principal Applicant's cumulative risk profile is why they allege there is a serious risk of persecution in India and that the IFA are therefore unreasonable.

A. *Contradictory Evidence*

[26] The Applicants directed the Court's attention to several discrete passages of the Decision and the evidence in the National Documentation Package [NDP] before the Officer that contradicts their statements. One example of this was the RAD's statement at paragraph 32 of the Decision that "in general, Sikh people live peacefully throughout India and the large majority are socially and economically integrated into Indian society." The Applicants pointed to various items in the NDP that suggest Sikhs face discrimination and localized violence to indicate that the RAD's reliance on one portion of the NDP without addressing contradictory evidence elsewhere in the NDP constitutes a reviewable error.

[27] The Applicants argue that the RAD erred in finding that the Applicants could live safely in an IFA by ignoring the totality of the country conditions that affect the Applicants. The RAD's finding that their beliefs were unsubstantiated and were not found to be a fact was unreasonable.

[28] The Applicants submit that their belief that the attacks they survived are consistent with the country conditions that mention persecution of religious minorities, and a rise of Hindu nationalism within India. However, the Applicants submit that the RAD took a one-sided portrayal of the evidence, and did not engage with or even identify contradictory evidence before it, nor did it explain its conclusions in not preferring the contradictory evidence.

[29] The Respondent submits that the country conditions were not stated in the first prong of the IFA test by the Applicants. Regardless, the documents cited did not contradict the RAD's conclusions.

[30] Indeed, the RAD's Decision acknowledged the country condition documents and the existence of sectarian violence in India targeting religious minorities, including Sikhs. The RAD Decision referenced that the country conditions in India are clear that some activists can face harassment and persecution but that the Applicants offered no reliable information suggesting that this is the case for them.

[31] Of note is the objective evidence from the Applicants' BOC that the Principal Applicant worked in the public sector in India for many years before his departure to Canada. The evidence

also clearly demonstrated that the Applicants claim for assistance has been refused from authorities in India several times, including from the Principal Applicant's brother, who is a high-ranking police officer. They claim the brother refused to assist them because of a property dispute. This evidence refuted any interest that the authorities may have in the Applicants.

[32] Other than general statements, the issue in this case was a lack of evidence, detail or explanation from the Applicants to support the assertions that they made. The RAD described the Applicants' assertions as "vague and confusing." The Applicants did not set out their particular risk within the context of the country's conditions. In those circumstances, it was open to the RAD to make the finding that there was no risk of persecution in the proposed IFA locations.

[33] The Respondent also pointed out that "a one-sided presentation of the evidence will not show that the RAD's weighing of all the evidence is unreasonable," citing this Court's decision in *Johal v MCI*, [1997] FCJ No 1760 at paragraph 11:

> In his argument, counsel for the applicant underlined excerpts from the documentary evidence. By using such tactics, counsel forgets a fundamental "rule" of the Court (i.e., to recognize that a Board is entitled to weight the totality of the evidence as to reliability and cogency). One cannot "dissect" the evidence and use only that portion which underlines one's point of view. In my respectful view, the documentary evidence within, read as a whole, does not tend to disprove that the applicant does not have a reasonable [IFA].

[34] I agree with the Respondent's argument. With respect, having considered the written and oral submissions as well as the record, I disagree that the RAD ignored the evidence presented or that it reached its conclusions without regard for the evidence. The Applicants' submissions

amount to asking the Court to reweigh the evidence before the RAD, which this Court cannot do on judicial review.

B. *Cumulative Risk Profile*

[35] The Applicants argue that the RAD failed to grapple with the fact that the Principal Applicant had a cumulative profile as a Sikh activist that could amount to a serious possibility of him facing persecution in India. The Applicants directed me to the RPD's decision describing the allegations of the claim as set out in the BOC as the Applicants "fear persecution at the hands of Hindu extremist groups in India due to the Principal Applicant's participation in several protests and because they are Sikhs."

[36] Specifically, they alleged the RAD erred in its analysis of the risks associated with the Applicants as Sikhs, and the risks associated with the Principal Applicant as a participant in political protests, but not the risks associated with being a Sikh participant in political protests. The Applicants cite *Djubok v MCI*, 2014 FC 497 and *Kundukhashvili v MCI*, 2022 FC 1081 in support of their argument that the failure to assess a cumulative risk profile is a reviewable error.

[37] Upon review of both of these cases, I find that these cases are distinguishable. The applicants in those cited cases faced specific risks from individual factors which, when assessed cumulatively, raised distinct risks of discrimination and persecution, amounting to a serious risk of persecution.

[38] This is not the case in the Applicants' situation. Here, the Applicants failed to establish any risk associated with either their identity as Sikhs or the Principal Applicant's participation in protests. Their allegations why they would be persecuted for either factor are based largely on their beliefs without supportive evidence.

[39] The Applicants were unable to demonstrate with supporting evidence any real risk they face on both of the two individual factors they allege they will be persecuted for. In these circumstances and having found that the cases cited were distinguishable, I cannot conclude that a cumulative risk profile ought to have been considered.

[40] The RAD accepted that the Principal Applicant participated in political protests, but found there was no evidence relating his allegations of harm to his participation in protests. The RAD found that the Applicants offered no reliable information suggesting that country conditions in India of some activists facing harassment and persecution would be the case for them.

[41] The Applicants' allegations regarding being in the "bad books" of the police and government officials did not concur with the Applicants' own evidence where they attempted to engage with the authorities to seek help on numerous occasions but the police took no action, and government officials have not responded. There was no evidence that any officials persecuted the Applicants after the various protests, or that they were wanted or harmed by any police or state authority. The RAD considered the RPD's finding that the Principal was in fact

employed by the Indian state for many years before his departure for Canada. In addition, the RAD considered that land disputes were not valid grounds for refugee protection.

[42] The Applicants did not challenge the RAD's finding that there was no evidence that the Principal Applicant would be targeted for his political/protest activities nor was he targeted for being a Sikh. It was the Applicants' submission that notwithstanding those negative findings, the RAD was still required to consider the issue of how all of the profiles intersect when assessing risk. The Applicants argued that "if neither profile on its own would put the Applicants at risk, the combined profile could lead to persecution. The cumulative profile can be more than the sum of its parts." The Applicants argue that the reasons are silent, and it is unclear that the RAD properly considered the cumulative profile.

[43] For the purposes of the appeal, the RAD accepted as fact that the Principal Applicant participated in protests, that the Applicants suffered attacks, had been subject to threats in their village and escaped from two murder attempts after being warned by his friends.

[44] However, the Applicants' evidence did not show that these experiences were connected in past participation in protests, or that the authorities were interested in them. In the absence of any particulars, the RAD summarized their case as "vague and confusing."

[45] The RAD found that the Principal Applicant's beliefs of risk and persecution were not supported by evidence. The RAD found that much of the rest of the Applicants' allegations can be said to be in the realm of belief. The Applicants' arguments do not address that their claims

lacked evidence, detail or explanation to support the assertions that they made. On the basis of the record before the RAD, I do not find that this conclusion was unreasonable.

VI. Conclusion

[46] The Applicants did not persuade me that the Decision was unreasonable. The Decision is intelligible, transparent, and justified (*Vavilov* at paras 10, 25, 99). Accordingly, this application for judicial review is dismissed.

[47] Both parties confirmed that there was no question for certification, and none arises.

JUDGMENT in docket IMM-3633-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There are no questions for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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