

Federal Court



Cour fédérale

Date: 20240709

Docket: IMM-3325-23

Citation: 2024 FC 1080

Ottawa, Ontario, July 9, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

**LAKHWINDER SINGH, TARANBIR SINGH
and MANDEEP KAUR**

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants seek judicial review of a Refugee Appeal Division [RAD] decision, dated February 21, 2023 [Decision], confirming the decision of the Refugee Protection Division [RPD] that they are not Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because they have an internal flight alternative [IFA] in Mumbai.

[2] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, I find that the Applicants have failed to discharge their burden and demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[3] The applicants, Lakhwinder Singh, Taranbir Singh and Mandeep Kaur [applicants], are citizens of India. They fear persecution from the Shiromani Akali Dal Badal [SADB] political party goons and the local police, if they return to India.

[4] Lakhwinder Singh [principal applicant] was a member of the SADB from 2010 to 2016 before deciding to support the Indian National Congress [the Congress] political party instead. The applicants also allege fearing their neighbour, a SADB member, because of an ongoing land dispute. The applicants explain that this change in political allegiance in addition to the land dispute led to the principal applicant being attacked by SADB goons twice; on October 18, 2017 and on January 20, 2018. The principal applicant claims that the police failed to provide him with assistance in both instances. With the help of an agent, the applicants travelled to Delhi and then to Canada, where they sought asylum.

[5] On August 4, 2022, the principal applicant's father had his house raided by local police. He was arrested and tortured and the perpetrators asked about his son's whereabouts. He was released from police custody after paying a bribe and he was then taken to the hospital for medical treatment.

[6] On July 20, 2022, the RPD rejected their refugee claims. The RPD concluded that the applicants were not Convention refugees nor persons in need of protection under the IRPA and found that they have a viable IFA in Mumbai or Kolkata.

III. Decision Under Review

[7] In its February 21, 2023 Decision, the RAD dismissed the appeal and confirmed the RPD decision.

[8] The RAD found that the agents of persecution do not have the motivation nor the means to pursue the applicants in the proposed IFA of Mumbai and that it is reasonable for them to relocate to this IFA. As such, it found that Mumbai is a viable IFA for the applicants.

[9] Under the first prong of the IFA test, the RAD concluded that the SADB, the local police and the political party goons are not motivated to pursue the applicants in Mumbai. First, the RAD found no indication of the involvement of the SADB party in the events described by the applicants, and found that the events all relate to the ongoing land dispute between the applicants' family and their neighbour. The RAD concluded that the agents of persecution are local, that the applicants are not politically active, and that the principal applicant is not a central figure in politics within his community. Therefore, the applicants are not likely to be a target of SADB throughout the country. The RAD also found that the arrest of the principal applicant's father was unlawful, that the police acted extrajudicially and that the police's actions were limited to their locality, with no broader or national authority. Lastly, the RAD found that the local police and the political party goons are not motivated to locate them beyond their local community as the evidence does not

establish that the applicants' information is available to police nationally or accessible to the agents of persecution. The evidence also does not establish that the agents of persecution have made any effort to locate the applicants outside of their local community.

[10] On the means to locate the applicants, the RAD found that there is no evidence that the local police issued any warrant or summons for the arrest, or criminal charges, against the principal applicant, or entered the applicants' names into a national registry such as the national Crime and Criminal Tracking Network and Systems. The RAD also found that it is highly unlikely that any information on the applicants would be found through the tenant registry process and that access to Aadhaar data requires a court order.

[11] Under the second prong of the test, the RAD concluded that Mumbai is a reasonable IFA. In coming to this conclusion, the RAD considered transportation and travel, language, education and employment, religion and caste, accommodation, indigeneity, medical and mental health care, as well as the fact that the applicants will not be required to live in hiding.

[12] As it found Mumbai to be a viable IFA, the RAD noted that the viability of one IFA is determinative and did not proceed with the two-prong analysis for the second proposed IFA in Kolkata.

IV. Issues and Standard of Review

[13] The only issue before the Court is whether the RAD's decision confirming that the applicants have a viable IFA in Mumbai is reasonable.

[14] The standard of review applicable to the merits of the RAD's Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a “rubber-stamping” exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

[15] 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). 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 section 96 and section 97 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.

[16] 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 [*Leon*]; *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; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1623 at para 16 [*Singh* 2023 FC 1623]; *Bassi v Canada (Citizenship and Immigration)*, 2024 FC 910 at para 16 [*Bassi*]; *Chatrath v Canada (Citizenship and Immigration)*, 2024 FC 958 at para 19 [*Chatrath*]).

[17] On the first prong of the test, the applicants bear the onus of demonstrating that the proposed IFA is unreasonable because they fear a possibility of persecution throughout their entire country. In order to discharge their burden, a claimant must demonstrate that they will remain at risk in the proposed IFA from the same individual or agents of persecution that originally put them at risk. The risk assessment considers whether the agents of persecution have the “means” and “motivation” to cause harm to the claimant in the IFA (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8 [*Singh* 2023 FC 996]). The applicants must establish that the agents of harm have both elements: the means and the motivation to cause harm (*Ortega v Canada (Citizenship and Immigration)*, 2023 FC 652; *Leon* at para 13). This assessment must be made by the decision maker, is a prospective analysis, and is considered from the perspective of the agents of persecution, not from the claimant’s perspective (*Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 29 [*Vartia*]; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21 [*Adeleye*]; *Aragon Caicedo v Canada (Citizenship and Immigration)*, 2023 FC 485 at para 12 [*Aragon Caicedo*]). The onus is therefore on the applicants to adduce sufficient evidence or facts to discharge their burden of proof and demonstrate, on a balance of probabilities, that the agents of persecution have the means and motivation to locate them in the proposed IFA and that therefore, they will be subject to a serious possibility of

persecution under section 96, or to a likelihood of a section 97 danger or risk in the proposed IFA (*Singh* 2023 FC 1623 at para 17; *Bassi* at para 17; *Chatrath* at para 20).

[18] For the second prong of the test regarding the reasonability of the refuge in other parts of the country, the threshold is very high and applicants for asylum must present actual and concrete evidence of the existence of conditions that would jeopardize their life or safety if they were to attempt to relocate to that part of the country (*Ranganathan v Canada (Minister of Citizenship and Immigration)*(CA), 2000 CanLII 16789 (FCA); *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at paras 20–21; *Singh* 2023 FC 1623 at para 18; *Bassi* at para 18; *Chatrath* at para 21).

A. *The RAD's Reasonable Finding on the First Prong of the IFA Test*

[19] The applicants submit that the RAD erred in its finding that the agents of persecution do not have the means nor the motivation to locate them in the proposed IFA. Citing *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*], *AB v Canada (Citizenship and Immigration)*, 2020 FC 915 [*AB*], and *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586 [*Zamora Huerta*], the applicants argue that it would be unreasonable to expect them to hide their location from their family and friends. They claim that the incident with the principal applicant's father is directly connected to their own fear of persecution, proves that the agents of persecution can solicit their whereabouts, and demonstrates that they will have to live in hiding; therefore jeopardizing their lives and safety throughout India. The applicants further argue that the RAD failed to provide adequate reasons when it noted in its decision that this situation differed from the cases in *Ali* or *Zamora Huerta*.

[20] In my view, the RAD's reasoning and conclusion that this case is distinguishable from *Ali* or *Zamora Huerta* "in which the appellant was effectively required to cease all communication with friends and family or force their friends and family to risk their own lives in concealing the Appellants' location" (RAD Decision at para 72), is reasonable.

[21] Indeed, in *Zamora Huerta*, *Ali* and *AB*, there was evidence that the applicants' relatives would be in danger if they lied to the persecutors about the applicants' whereabouts. There was also evidence that the persecutors had the capacity and willingness to pursue the applicants in their new locations based on the acquired information (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1211 at para 33 [*Singh* 2023 FC 1211]; *Bassi* at para 26; *Chatrath* at para 26).

[22] As held by Justice Rochester in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1151 at paragraph 17 [*Singh* 2023 FC 1151]:

[T]he 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.

[23] Furthermore, as held in *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, in *Singh* 2023 FC 996 at paragraph 24, held that:

... 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.

[24] Likewise, in this case, even if the agents of persecution would be able to determine the applicants' location by questioning their family and neighbours, there is insufficient evidence to establish that the police or SADB goons have the motivation to find the applicants in the proposed IFA.

[25] The applicants further submit that the RAD recognized their fear of the national police in India and that their subjective fear needs to be assessed from their own perspective as refugee claimants (*Gebremichael v Canada (Minister of Citizenship and Immigration)*, 2006 FC 547 at para 48; *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 119). As such, they submit that their fear is of the national police and the government and this should be enough to satisfy the motivation requirement in the first prong of the test. They lastly submit that the RAD failed to recognize that the reason why they were not contacted or found by the agents of persecution during their time in Delhi is because they had gone into hiding.

[26] The RAD did take note of the applicants' fear of national police at paragraph 31 of the Decision. Its full analysis on this point follows:

[31] Therefore, although the Appellants' fear of the national police in India is understandable, especially in light of the experience of the Principal Appellant's father, I find that the evidence establishes that the local police did not act with broad or national support or authority. The local police's actions, as described by the Appellants, are limited geographically to the Appellants' former community and residence (as well as the local police station at which the Principal Appellant's father was detained and released). [emphasis added] (RAD Decision at para 31).

[27] The RAD reasonably found that, despite the applicants' allegations of fear of persecution from the national police, there is insufficient evidence to establish that the persecution is not limited geographically to their community. The applicants may have a subjective fear of persecution but they failed to establish an objective well-founded fear of persecution (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 691, 723). In addition and as aforementioned, the assessment made by the decision maker on the first prong of the IFA test is a prospective analysis considered from the perspective of the agents of persecution, not from the claimant's perspective (*Vartia* at para 29; *Adeleye* at para 21; *Aragon Caicedo* at para 12). The RAD's finding is therefore reasonable as the applicants failed to discharge their burden of proof by demonstrating, on a balance of probabilities, that the police have the motivation to locate them in the proposed IFA (*Singh* 2023 FC 1623 at para 17; *Bassi* at para 17; *Chatrath* at para 20).

[28] Consequently, the applicants have not discharged their burden to demonstrate that the RAD's decision is unreasonable. The RAD's reasoning as to why the applicants have a viable IFA 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; *Singh* 2023 FC 1211 at para 38; *Bassi* at para 33; *Chatrath* at para 37).

VI. Conclusion

[29] The RAD's decision is justified in light of the factual and legal constraints of this case (*Mason* at para 8; *Vavilov* at para 99).

[30] For these reasons, the application for judicial review is dismissed.

[31] No questions of general application have been submitted for certification, and the Court agrees there is none.

JUDGMENT in IMM-3325-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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