

Federal Court



Cour fédérale

Date: 20240715

Docket: IMM-1482-23

Citation: 2024 FC 1083

Ottawa, Ontario, July 15, 2024

PRESENT: Mr. Justice McHaffie

BETWEEN:

GURSEWAK SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Gursewak Singh sought refugee protection in Canada, fearing police in his home state of Punjab. The Punjab police had twice arrested and tortured Mr. Singh, questioning him about a friend who was believed to be a militant separatist, and releasing him only on payment of a bribe. The Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] found that Mr. Singh was not a Convention refugee or a person in need of protection because he had an internal flight alternative [IFA] within India. The RAD concluded that

Mr. Singh could safely and reasonably seek refuge in Mumbai, since the Punjab police would not be motivated or able to locate him there. Mr. Singh's refugee claim was therefore refused.

[2] Mr. Singh seeks judicial review of this decision, arguing the RAD's analysis of the means and motivation of the Punjab police to locate him was unreasonable. For the following reasons, I find that Mr. Singh has not met his onus to establish that the RAD's decision was unreasonable. The application for judicial review must therefore be dismissed.

[3] Mr. Singh's central, and strongest, argument stems from evidence that the Punjab police pursued him to Chandigarh after violently coercing his father to reveal his location. Mr. Singh claims this shows both the motivation of the police to locate him and the means by which they could do so. He argues the RAD's conclusions to the contrary are inconsistent with this Court's decisions in *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93; *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586; and *AB v Canada (Citizenship and Immigration)*, 2020 FC 915. In those decisions, the Court held that a refugee claimant cannot be expected to hide in an IFA and cut off communication with family members, and that family members cannot be expected to place their lives in danger by refusing to divulge the claimant's whereabouts: *Ali* at paras 49–50; *Zamora Huerta* at para 29; *AB* at paras 20–24.

[4] Despite some concerns about the internal logic of the RAD's means analysis, Mr. Singh has not satisfied me that the RAD's IFA analysis as a whole is unreasonable. In particular, I find that the RAD's conclusion that the Punjab police were not sufficiently motivated to track

Mr. Singh to Mumbai was reasonable, and that this renders any concerns about the question of means non-determinative.

[5] Although the RAD's discussion of motivation is brief, it is important to situate that discussion in the context of the findings of the Refugee Protection Division [RPD] and the submissions Mr. Singh made on his appeal to the RAD: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 125–128. The RPD had found that the police would not be motivated to locate Mr. Singh in Mumbai, noting that Mr. Singh had himself testified that the police's prime motivation was to question him about his friend and to obtain bribes for his release. The RPD observed that Chandigarh borders Punjab, with parts of the city in Punjab, such that the police's efforts to locate Mr. Singh in Chandigarh did not mean they would be motivated to look for him in the more populous and distant city of Mumbai. The RPD also noted there was no evidence that the police or other agents of harm had made enquiries outside Punjab, and they had made no efforts to commence an interstate search for him.

[6] On appeal, Mr. Singh challenged the RPD's finding regarding motivation. He argued that the Punjab police were motivated to locate him because he was suspected of being a militant and the police believes that militancy is returning to the state. He further argued that the police looking for him in Chandigarh showed there was interstate communication between Punjab and Chandigarh. He highlighted elements of the IRB's National Documentation Package [NDP] for India that speak to the risks faced by suspected Sikh militants throughout India. The thrust of Mr. Singh's appeal on this issue was thus that the police would be motivated to find him since they suspected he was a Sikh militant.

[7] The RAD responded to this submission in its two-paragraph analysis of the issue of motivation:

There is insufficient evidence that the Punjab police suspect the Appellant of being a militant. This fact has not been established on a balance of probabilities. There is no warrant for his arrest, and he was released by the police twice upon the payment of a bribe. This does not suggest that he is suspected of being a dangerous militant. As the Appellant stated during the RPD hearing, the primary motivation of the police was to question him about [his friend's] whereabouts and to obtain a bribe. I have accepted this as the motivation of the police in my IFA analysis.

There is insufficient evidence that the local police in the Appellant's village would be motivated to invest time and resources to locate him outside the state of Punjab to collect a bribe. There are inadequate numbers of police officers in India to serve the size of the population. Police officers are overworked and overburdened. Police stations are understaffed and under-resourced. In this context, it would be far easier and far more likely for a corrupt police officer to collect bribes locally rather than invest the time and resources to search for a person in another state.

[Emphasis added; footnotes omitted.]

[8] These reasons address the primary submission Mr. Singh made to the RAD regarding the motivation of the Punjab police to locate him. The RAD referred to the relevant evidence, including Mr. Singh's own direct response to the RPD regarding the police's motivation. While the RAD does not refer directly to the Chandigarh incident, it refers to the motivation of police to locate Mr. Singh "outside the state of Punjab" to collect a bribe. In the context of the proposed IFA in Mumbai, the RPD's discussion of Chandigarh being adjacent to and partially within Punjab, and Mr. Singh's submissions regarding the police's alleged motivation, the RAD's reasoning was sufficiently justified, transparent, and intelligible: *Vavilov* at paras 91, 94, 99–100,

127–128. I am therefore not satisfied that Mr. Singh has established that the RAD’s reasons on this issue are unreasonable.

[9] Given this conclusion, the RAD’s finding that the Punjab police lacked the means to locate Mr. Singh was not determinative of its conclusion that he could safely seek refuge in Mumbai. On the question of means, the RAD’s decision must again be read in light of Mr. Singh’s submissions on appeal. In addition to referring to the possibility of interstate police communication, Mr. Singh noted that he could be found through means such as tenant verification and the Crime and Criminal Tracking Network System [CCTNS]. After referring to several passages of the NDP regarding the CCTNS, Mr. Singh submitted there was enough evidence to conclude that “Indian police do communicate inter-state and can track the individuals of interest using the database shared across states especially when the allegations are of Sikh militancy.” While Mr. Singh did note that he should not be expected to live in hiding, as he had in Chandigarh, this submission was tied to his asserted risk of being located through the tenant verification system and the CCTNS.

[10] The RAD referred to various aspects of the NDP dealing with interstate sharing of information between police forces, and the lack of an effective national database. It rejected Mr. Singh’s assertion that the police looking for him in Chandigarh showed there was interstate sharing, noting that the Punjab police knew where he was because his father had told them. The RAD went on to discuss the evidence in the NDP regarding the CCTNS, the Aadhaar card, and the tenant verification system.

[11] I agree with Mr. Singh that there is some incoherence in the RAD's reasoning with respect to the means available to the Punjab police. In essence, the RAD rejected Mr. Singh's argument that the Punjab police could find him through interstate police communication on the basis that the police had located him the last time not through such communication but through his father. Yet the RAD did not consider whether the Punjab police could again locate Mr. Singh through the violent coercion of his father, as they had previously. While Mr. Singh did not argue in his submissions to the RAD that the Punjab police could locate him in this way, the RAD's own response to the issue of interstate police communication raised the issue.

[12] However, I need not address whether this logical incoherence is sufficient to render this aspect of the RAD's analysis unreasonable given my conclusions with respect to the issue of motivation. In other words, even if the Punjab police could locate Mr. Singh in Mumbai through his family, the RAD's conclusion that they would not be motivated to do so, and that Mumbai was therefore a safe place to seek refuge, was a reasonable one that was open to it on the record.

[13] Mr. Singh's other arguments also do not persuade me that the RAD's decision was unreasonable. In his written submissions, Mr. Singh raised the seriousness of the accusations against him by the Punjab police, contending that the RAD had found that he "was, in fact, persecuted on allegations of Sikh militancy." This contention, not pressed during oral argument, is directly contrary to the RAD's finding, reproduced above, that "[t]here is insufficient evidence that the Punjab police suspect [Mr. Singh] of being a militant."

[14] Similarly, Mr. Singh's argument that the RAD's analysis was unduly "microscopic," given its focus on the CCTNS, ignores the fact that he had made extensive submissions to the RAD on the CCTNS and the ability of police to locate him using that system. The RAD can hardly be faulted for addressing in detail an issue Mr. Singh focused on in his appeal submissions.

[15] As Mr. Singh has not established that the RAD's decision was unreasonable, the application for judicial review will be dismissed.

[16] Neither party proposed a question for certification. I agree that no question meeting the test for certification arises in the matter.

JUDGMENT IN IMM-1482-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1482-23

STYLE OF CAUSE: GURSEWAK SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: JULY 9, 2024

JUDGMENT AND REASONS: MCHAFFIE J.

DATED: JULY 15, 2024

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