

Federal Court



Cour fédérale

Date: 20240819

Docket: IMM-10223-23

Citation: 2024 FC 1263

Ottawa, Ontario, August 19, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

WAZINDER SINGH GILL

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Wazinder Singh Gill, an Indian citizen, seeks judicial review of the decision rendered by the Refugee Appeal Division [RAD] on July 8, 2023 [Decision] dismissing his appeal and confirming the decision rendered by the Refugee Protection Division [RPD]. The RAD, like the RPD before it, found the determinative issue to be one of internal flight alternative [IFA] in Delhi, India.

[2] For the reasons that follow, I will dismiss Mr. Gill's application for judicial review. In brief, Mr. Gill has not demonstrated, as it was his burden, that the RAD erred and that its Decision is unreasonable under the applicable standard of review.

II. Context

[3] On March 13, 2020, Mr. Gill entered Canada, holding a multiple entry visitor's visa issued in 2018 and valid until 2025. Mr. Gill claimed refugee protection, pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 based on his fear at the hands of the Punjab police.

[4] The RAD cited and applied the IFA two-prong test analysis.

[5] On the first prong of the test, the RAD found that Mr. Gill had failed to establish that he faces a serious possibility of persecution or, on a balance of probabilities, a risk to life, a risk of cruel and unusual treatment or punishment or a danger of torture in the proposed IFA. The RAD agreed with the RPD that the Punjab police did not have the means or the motivation to locate Mr. Gill in Delhi.

[6] Regarding the agent of harm's means, and having outlined the uncontradicted relevant evidence, the RAD found that Mr. Gill's interactions with the Punjab police all took place extrajudicially and that, as a consequence, no official record was captured in criminal databases, including the Crime and Criminal Tracking Network and Systems [CCTNS]. The RAD consequently found that (1) the CCTNS is thus not a means by which the Punjab police could

locate Mr. Gill in Delhi; (2) similarly, any check at an airport would not alert the police of his return; (3) the mandatory tenant verification would not, on balance, alert the Punjab police of Mr. Gill's whereabouts; and (4) criminal background checks related to employment would not lead to notifying the police.

[7] On the agent of harm's motivation to locate Mr. Gill in Delhi, the RAD found that Mr. Gill's profile was not one of a person that would motivate an interstate search by the local Punjab police that have been targeting him. The RAD found that the police's interest in the dispute was financial and that national security and criminality were not, on balance, what was motivating the local police to target him.

[8] On the second prong of the applicable IFA test, the RAD found that the proposed IFA was objectively reasonable in all the circumstances, including those particular to Mr. Gill. The RAD set out the applicable threshold set out by the Federal Court of Appeal (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [*Ranganathan*] at para 15; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*]). The RAD then stated that (1) documentary evidence indicating that incidents of physical hostility towards Sikhs are rare and not faced by the vast majority of Sikhs, particularly in cities as Delhi; (2) after Hindi, Punjabi is the most widely spoken language in Delhi; (3) Mr. Gill has not established he would be unable to find work; and (4) Mr. Gill's argument that he has never lived outside Punjab does not establish undue hardship.

III. Decision

[9] The RAD's conclusions regarding the existence of a viable IFA must be reviewed on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 17 [*Vavilov*]; *Djeddi v Canada (Citizenship and Immigration)*, 2022 FC 1580 at paras 16-17 citing *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at para 19; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 14; *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62 at para 6; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 17; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11).

[10] The Court must therefore determine whether the Decision is based on an "internally coherent and rational chain of analysis" that is justified in light of the legal and factual constraints (*Vavilov* at para 85). Any deficiencies in a decision must be "sufficiently central or significant to render the decision unreasonable." (*Vavilov* at para 100).

[11] The underlying principle to an IFA analysis is that international protection can only be provided if the country of origin cannot offer adequate protection throughout its territory to the person claiming refugee status. The onus rests upon the applicant to prove, on a balance of probabilities, that he risks a serious possibility of persecution throughout his entire country of origin (*Thirunavukkarasu* at para 2; *Ranganathan* at para 13; *Emezieke v Canada (Citizenship and Immigration)*, 2014 FC 922 at para 28; *Nunez Mercado v Canada (Minister of Citizenship and Immigration)*, 2011 FC 792 at para 12).

[12] The test for determining whether a viable IFA exists is two-pronged, as outlined by the RAD. First, the RAD must be satisfied on a balance of probabilities that there is no serious possibility that the applicant will be persecuted in the proposed IFA. Second, the conditions in the proposed IFA must be such that it is not unreasonable for the applicant to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706).

[13] Mr. Gill bears the burden to demonstrate that the RAD's Decision is unreasonable (*Vavilov* at para 100).

[14] Before the Court, Mr. Gill submits that the RAD's Decision deserves judicial review. He asserts that his examination reveals that both objective and subjective evidence suffice to establish that there is in fact, no potential IFA for him in India.

[15] At the hearing of this application, Mr. Gill attempted to raise new arguments, i.e., arguments that had not been raised or addressed by the RAD and/or that had not been raised in his Memorandum of Fact and Law. I will not consider these arguments (*Abdulkadir v Canada (Citizenship and Immigration)*, 2018 FC 318 at para 81; see also *Del Mundo v Canada (Citizenship and Immigration)*, 2017 FC 754 at paras 12-14; *Mishak v Canada (Minister of Citizenship and Immigration)* (1999), 1999 CanLII 8579 (FC), 173 FTR 144 (FCTD) at para 6; *Adewole v Canada (Attorney General)*, 2012 FC 41 at para 15).

[16] On the first prong of the applicable test, Mr. Gill chose not to challenge the RAD's central finding that Mr. Gill's interactions with the Punjab police all took place extrajudicially, which, as the Minister outlines, formed the backdrop of the RAD's Decision (at para 23 of the RAD's Decision). In that regard, Mr. Gill does not dispute that (a) he was not formally charged with a crime; (b) he was never brought before a judge or a magistrate; (c) no First Information Report was registered against him; and (d) he was released without charge or any further criminal proceeding after paying a substantial bribe. Additionally, Mr. Gill does not contest the RAD's conclusion that his information would not be found in any criminal databases. Rather, Mr. Gill asserts that he is a person of interest, presents arguments deriving from this premise, but presents no arguments to establish that the RAD's conclusion to the contrary is flawed.

[17] Hence, having failed to challenge the RAD's core findings on the lack of means and motivation of the agents of harm to locate him in Delhi, Mr. Gill's arguments on the first prong of the applicable test cannot succeed. Mr. Gill has simply not met his burden to show that the RAD's conclusions are unreasonable.

[18] On the second prong of the applicable IFA test, Mr. Gill submits solely that the RAD failed to adequately consider the challenges faced by the Sikh minority in India, particularly in Delhi. However, at paragraphs 46 to 48 of its Decision, the RAD clearly considered this issue and relied on objective documentary evidence. It is useful to note that the role of the Court on judicial review is not to reweigh the evidence (*Vavilov* at paras 125-126; *Hassani v Canada (Citizenship and Immigration)*, 2023 FC 734 at para 16). Mr. Gill did not demonstrate how the RAD's weighing of the evidence is unreasonable.

[19] In essence, Mr. Gill disagrees with the Decision; he failed to raise any arguments to establish that the Decision is unreasonable. Given the record and the evidence before the RAD in this case, I am convinced, on the contrary, that its Decision bears the hallmarks of reasonableness, i.e., justification, transparency and intelligibility, and that it is reasonable (*Vavilov* at para 99).

[20] No question of general importance was proposed, and I agree that none arises.

JUDGMENT in IMM-10223-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.
2. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper Respondent.
3. No question is certified.
4. No costs are awarded.

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10223-23

STYLE OF CAUSE: WAZINDER SINGH GILL v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 12, 2024

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: AUGUST 19, 2024

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