

Federal Court



Cour fédérale

Date: 20240910

Docket: IMM-5399-23

Citation: 2024 FC 1421

Ottawa, Ontario, September 10, 2024

PRESENT: Madam Justice Gagné

BETWEEN:

**SATPAL SINGH
MANDEEP KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a couple of Indian citizens. They are seeking judicial review of a decision by the Refugee Appeal Division [RAD] dismissing their claim for refugee protection.

The RAD rejected the Applicants' new evidence and found that the claim based on the Principal

Applicant's political profile was not credible. As for the Applicants' other allegations, it found that they had a viable internal flight alternative [IFA] in their own country.

II. Facts

[2] According to the Applicants' Basis of Claim Form, the Principal Applicant fears a drug dealer from his home area, who happens to be a police informant. The Principal Applicant witnessed a drug transaction between that man and young people, and tried to report the event to the police. When he understood that the police was protecting the drug dealer, he tried to file a complaint at a higher level. He was thrown out of the office.

[3] In August 2018, the police convened the Principal Applicant to their office and took his fingerprint, photo and signature on a blank document. They gave him a last warning and let him go.

[4] The Applicants applied for a Canadian visa in September 2018 and in November 2018, the Principal Applicant's father recommended he left India as the drug dealer and police were conspiring to kill him. The Applicants left their children with their parents and fled India for Canada. After their arrival, the Principal Applicant was informed that his father was arrested and tortured by the police in an attempt to know the Applicants' whereabouts.

III. Decision Under Review

[5] The RAD first considers two affidavits and a medical note that the Applicants wished to file as new evidence. In his own affidavit, the Principal Applicant states that after the rejection of their refugee claim by the Refugee Protection Division, the police raided his family home and beat his father to a point where he needed medical assistance. He attaches to his affidavit, an affidavit from his father and one from his father-in-law.

[6] Applying the Singh/Raza factors (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385), the RAD rejects both the medical note and the affidavit of the Applicant's father.

[7] The RAD finds that the medical note lacks credibility, as it is undated and it bears no reference number.

[8] The RAD also rejects the affidavit of the Principal Applicant's father as i) the first event discussed therein predates the RPD decision, and; ii) the second event refers to the corroborating medical note that was found to be not credible.

[9] As to the affidavit of the Associate Applicant's father, the RAD accepts the portion that deals with events that postdate the RPD decision, rejecting the remainder.

[10] The RAD then goes on to confirm the RPD decision and finds that the Applicants have a viable IFA in major cities in India. Having considered the Principal Applicant's political profile and the police's limited interest in him, the RAD finds that there is insufficient evidence that the agent of persecution is motivated to locate the Applicants in the proposed IFA locations.

[11] The RAD also rejects the Applicants' argument that they could be located in India through family members whom the police visited since the Applicants' departure. The evidence shows that the information received from the Applicants' parents seems to have appeased the police; as a result, there was no further repercussions or harm coming to any of them since the police arrested the Principal Applicant's father in November 2018 and released him the next day. In addition, since the Principal Applicant was never suspected of or charged with any crime, his name will not be in the CCTNS database, so he could not be tracked and an eventual tenant verification would provide no result.

IV. Issues and Standard of Review

[12] This Application for Judicial Review raises the issues as to whether the RAD made a reviewable error in:

- A. Rejecting the new evidence; or
- B. Its analysis of the IFA.

[13] It is undisputed that the standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

A. *Did the RAD make a reviewable error in rejecting the new evidence?*

[14] The Applicants state that the RAD erred by using evidence set aside as inadmissible (the medical note) to discredit other evidence (the affidavit of Principal Applicant's father).

[15] With respect, I disagree. As stated by the Federal Court of Appeal in *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96:

[38] The true crux of the issue here consists in determining whether the implied conditions of admissibility identified in the context of paragraph 113(a) by Justice Sharlow in *Raza* are also applicable to subsection 110(4). Because it goes to the heart of the submissions filed by counsel for both parties and the intervener, it is important to reproduce the following relevant excerpt from that decision [at paragraphs 13 to 15]:

As I read paragraph 113(a), it is based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD. Paragraph 113(a) asks a number of questions, some expressly and some by necessary implication, about the proposed new evidence. I summarize those questions as follows:

Credibility: Is the evidence credible, considering its source and the circumstances in which it came into existence? If not, the evidence need not be considered.

[...]

[16] In *Ajamole v Canada (Minister of Citizenship and Immigration)*, 2023 FC 330, Justice Henry Brown adds the following:

[27] In my view, the RAD was entitled to consider the credibility of the text messages and photos after its findings with respect to the police reports. There is no merit to the submissions of the Applicant that this credibility assessment was made in any sort of error, or that notice was required of the RAD's concerns, or that an oral hearing was required per paragraph 110(6) of the *Immigration and Refugee Protection Act*, SC 2001, c 27...

[17] Likewise, I see no error in the RAD's assessment of the admissibility of the new evidence presented by the Applicants. It was open to the RAD, as the trier of facts, to assess the credibility of the medical note and to find that it lacked some of the basic information that would allow the RAD to give it probative value. It was also open to the RAD, in these circumstances, to find that the event the medical note was meant to corroborate likely did not occur.

B. *Did the RAD make a reviewable error in assessing the proposed IFA?*

[18] The Applicants argue that since the police gathered the Principal Applicant's personal information and arrested his father shortly after his departure, the RAD erred in finding that the Applicants had a viable IFA in India.

[19] The Applicants cite an excerpt of Tab 10.13 of the National Documentation Package that states that since 2015, "the scope of the CCTNS project was extended [...] to the establishment of an Inter-Operable Criminal Justice System by integrating data from prisons, courts, prosecution, forensics, police and fingerprints." According to the Applicants, the mere fact that

the police took the Principal Applicant's fingerprints means that he is registered in the CCTNS, which in turn means that the Applicants have no viable IFA in India. I do not agree.

[20] I also do not agree with the Applicants' argument that because the Principal Applicant was summoned to the police station instead of an undisclosed location means that his arrest was legal. The police's interest in the Principal Applicant was localized in nature; it comes from the Principal Applicant's interference with the activities of a local drug dealer who had connections with the police, as well as from the Applicants being potential witnesses in a complaint against the local police. The Principal Applicant is not suspected of nor accused of any crime. It is more likely than not, in these circumstances, that the periodical visits to the Applicants' family were made to make sure there would be no such interference in the future.

[21] IFA findings by the RAD have to be reviewed by the Court on a case-by-case basis (*Essel v Canada (Citizenship and Immigration)*, 2020 FC 1025 at para 15; *Kodom v Canada (Citizenship and Immigration)*, 2023 FC 305; *Aulakh v Canada (Citizenship and Immigration)*, 2023 FC 1176 at para 26; *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1290 at para 22).

[22] In this case, I am satisfied that the RAD applied the proper test and reasonably considered all the facts before reaching its conclusion.

VI. Conclusion

[23] Since I am of the opinion that the Applicants did not discharge their burden of establishing that the RAD committed a reviewable error in concluding that there was an IFA available to them in India, their application is dismissed. The Applicants did not propose any question of general importance for certification and no such question arises from the facts of this case.

JUDGMENT in IMM-5399-23

THIS COURT'S JUDGMENT is that:

1. The Applicants' Application for Judicial Review is dismissed;
2. No question of general importance is certified.

"Jocelyne Gagné"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5399-23

STYLE OF CAUSE: SATPAL SINGH et al v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: AUGUST 27, 2024

JUDGMENT AND REASONS: GAGNÉ J.

DATED: SEPTEMBER 10, 2024

APPEARANCES:

Nilufar Sadeghi FOR THE APPLICANTS

Mario Blanchard FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates FOR THE APPLICANTS
Montreal, QC

Attorney General of Canada FOR THE RESPONDENT
Montreal, QC