Date: 20241024

Docket: IMM-10887-22

Citation: 2024 FC 1692

Ottawa, Ontario, October 24, 2024

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

HARPAL SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1]   The central issue to be determined on this application is whether the Refugee Appeal

Division [RAD] committed a reviewable error and breached procedural fairness by basing its

analysis and determination of the safety and reasonableness of Internal Flight Alternatives [IFAs]

on an older and outdated version of the National Documentation Package [NDP] for India when

dealing with the Applicant's appeal from the decision of the Refugee Protection Division [RPD]

denying his refugee claim. I conclude that it did not.

[2]   The Applicant, a citizen of India, claims that in 2017 the Punjab police assaulted him, arrested him twice, and tracked him due to false accusations of association with anti-national militants. He fled India and sought refuge in Canada.

[3]   The RPD denied the Applicant's refugee claim after identifying viable IFAs elsewhere in India, in City X and City Y [the Proposed IFAs].

[4]   The test by which to decipher the availability of a claimant's IFA is the two-pronged test set out in the benchmark case of *Rasaratnam v Canada (MEI)*, 1991 CanLII 13517, [1992] 1 FC 706 (FCA) at 711 [*Rasaratnam*]; specifically, the tribunal is required to be satisfied, on a balance of probabilities, that there was no serious possibility of the claimant being persecuted in the IFA and that, in all circumstances including circumstances particular to them, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[5]   The RPD concluded there was no serious possibility of persecution in the Proposed IFAs because the Applicant's profile was not one of either a wanted criminal, suspect or person of interest that would motivate the expenditure of resources by Punjab police to search for him outside of Punjab. The RPD also found that conditions in the Proposed IFAs would not be unreasonable or unduly harsh for the Applicant.

[6]   The RAD rejected the Applicant's appeal on October 18, 2022. It independently reviewed the record, including the June 2021 edition of the NDP on India [2021 NDP] relied upon by the Applicant, and found insufficient evidence that the Punjab police would identify and locate the

Applicant in the Proposed IFAs using available databases and collaborative measures. The RAD also agreed with the RPD's decision that it would not be unreasonable or unduly harsh for the Applicant to relocate to the Proposed IFAs.

[7]   The Applicant submits that the RAD erroneously based its analysis on documents or citations from the 2021 NDP that were updated or removed a few months before the RAD rendered its decision. I disagree.

[8]   The fact that the RAD relied on a version of the NDP in force at the time the appeal was brought, but updated before its decision was rendered, is not in itself a breach of procedural fairness. First, there is no indication that the Applicant asked the RAD to consider the 2022 version of the NDP [2022 NPD] nor that he filed any submissions based on the updated version. Second, while the RAD ought to consider the most recent NDP in assessing the risk of persecution, the onus is on the Applicant to demonstrate on judicial review not only that the new NDP contains recent information that the RAD did not consider, but also that the more recent information deviates from the previous information and could have changed the decision rendered: *Thind v Canada (Citizenship and Immigration)*, 2022 FC 1782 at paras 21-23 [*Thind*]; *Kamara v Canada (Citizenship and Immigration)*, 2024 FC 13 at paras 31-33. In other words, the Applicant was required to establish that the information was sufficiently different, novel and significant. The Applicant has failed to do so here.

[9]   The Applicant claims he has meticulously followed the instructions of this Court in *Thind*. However, the Applicant did not include the 2021 NDP in the Applicant's Record. He

would have been entitled to include any relevant portions of the 2021 NDP in his record in support of an alleged breach of procedural fairness. In the absence of such evidence, I am unable to compare and ascertain whether the NDP documents referenced by the RAD are sufficiently different, novel and significant from those in the 2022 NDP, so as to constitute a breach of procedural fairness. In fact, I note that the excerpts from the updated NDP cited by the Applicant are quite similar to the evidence referred to by the RAD in its decision.

[10]   In terms of the first prong of the *Rasaratnam* test, an applicant seeking to review a RAD's IFA determination must demonstrate, on a balance of probabilities, that they would be at serious risk of persecution throughout the country in question. The risk alleged must be personalized to the applicant's circumstances: *Alvarez Valdez v Canada (Immigration, Refugees and Citizenship)*, 2021 FC 796 at para 21.

[11]   I find that the RAD reasonably concluded that the Applicant failed to demonstrate a serious possibility that the Punjab police would be motivated to track a suspect with the Applicant's particular profile to the Proposed IFAs or had the means to do so. The RAD was not satisfied that the Applicant's name is in databases available to the police that would identify him as a criminal or militant, given that there was no warrant out for his arrest, he had not been charged with a crime, and he did not possess any information of value. The RAD's line of analysis was transparent, intelligible and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15.

[12]   In terms of the second prong, it was the Applicant's onus to establish, on a balance of probabilities, that he would suffer unreasonable or unduly harsh conditions in the Proposed IFAs. The Applicant faces a "very high threshold" to demonstrate, through "actual and concrete evidence," that relocating to the Proposed IFAs would jeopardize his life and safety: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789, [2001] 2 FC 164 (FCA) at para 15.

[13]   While the 2022 NDP describes general risks of discrimination and violence for vocal pro-Khalistan activists outside of Punjab, I see no error in the RAD's conclusion that the Applicant would not face life-threatening conditions in the Proposed IFAs. As noted by the RAD, the Applicant did not establish, on a balance of probabilities, that he held any political or religious views that would put him at risk of being attacked, discriminated against, persecuted, or harmed by Hindu nationalist groups or political parties in the Proposed IFAs.

[14]   I find that the RAD's decision-making process was both fair and just in the circumstances. Its decision flows from coherent and rational reasoning justified in relation to the relevant legal and factual constraints. Accordingly, the application is dismissed.

[15]   The parties did not propose any questions for certification and none will be certified.

<u>JUDGMENT IN IMM-10887-22</u>

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Roger R. Lafrenière"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-10887-22

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JUDGMENT AND REASONS: LAFRENIÈRE J.

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