

Federal Court



Cour fédérale

Date: 20250130

Docket: IMM-15538-23

Citation: 2025 FC 180

Ottawa, Ontario, January 30, 2025

PRESENT: Madam Associate Chief Justice St-Louis

BETWEEN:

**SUKHJINDER SINGH
AMRINDER SINGH
GURLEEN KAUR
GURJINDER KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Sukhjinder Singh [Principal Applicant], Mrs. Gurjinder Kaur and their two children, [collectively, the Applicants] seek judicial review of the decision rendered by the Refugee Appeal Division [RAD] on November 14, 2023 [the Decision]. The RAD dismissed the Applicants' appeal and confirmed the decision by the Refugee Protection Division [RPD] that

they have a viable internal flight alternative in Mumbai and Delhi [IFA] and that they are neither Convention refugees nor persons in need of protection.

[2] Before the Court, the Applicants argue that the RAD erred on its assessment of the first prong of the applicable legal test in concluding that the agent of persecution lacked motivation and means to find them in the IFA. The Applicants do not raise concerns against the RAD's conclusion on the second prong of the legal test.

[3] The Applicants submit four arguments, namely that the RAD (1) unreasonably concluded that the core of the Applicants' claim is in relation to the feud with the Principal Applicant's business partner in Dubai; (2) unreasonably concluded that the agents of persecution lack the means and motivation to track the Applicants in Mumbai and Delhi; (3) erred in refusing to consider the impact of the Principal Applicant being fingerprinted, photographed and forced to sign blank documents; and (4) unreasonably concluded that the police would be unable to track the Applicants' through contact with family members.

[4] The Applicants have not filed their own affidavit and any alleged error must therefore appear on the face of the record (*Moldeveanu v Canada (Minister of Citizenship and Immigration)* (1999), 235 NR 192 (FCA) at para 15; *Ruan v Canada (Citizenship and Immigration)*, 2019 FC 1522 at paras 23-24).

[5] The Minister of Citizenship and Immigration [Minister] responds, essentially, that the Applicants have not demonstrated that the RAD's decision is unreasonable, as was their burden, and that their application for judicial review must therefore be dismissed.

[6] For the reasons that follow, the application for judicial review will be dismissed. The Applicants have not convinced me that the RAD's conclusion that the Applicants have not established the agents of persecution's motivation to find them in the IFA is unreasonable. As discussed with the parties at the hearing, and as they agreed, such a finding is fatal to the application and I do not need to examine the RAD's other conclusions.

II. Context

[7] In February 2018, the Applicants, Indian citizens, arrived in Canada as visitors, holding Canadian multiple entry temporary resident visas. In May 2018, Mr. Singh, the Principal Applicant, exited Canada for the United States, aiming to secure a work permit at the Canadian port of entry upon re-entry. However, he was denied re-entry due to charges against him in Dubai, United Arab Emirates [UAE]. Later, the Principal Applicant was also denied boarding on a flight to Canada when his Canadian visa was questioned. Ultimately, in September 2019, the Principal Applicant came back to Canada via the United States.

[8] In November 2019, the Applicants claimed refugee protection in Canada alleging, in the narrative from the Principal Applicant, that their lives had been in great danger in India at the hands of the Principal Applicant's business partner in Dubai, UAE and of the Indian police.

[9] On August 21, 2023, the Refugee Protection Division rejected the Applicants' claim finding they had an IFA. In brief, the RPD found under the first prong of the applicable legal test that the Punjab police did not have the motivation to find the Applicants in the IFA; that the business partner lacked the means to pursue them in the proposed IFA and that his influence was insufficient to motivate the local police to pursue the Applicants in the proposed IFA. On the second prong, the RAD found that it was not shown to be unreasonable for the Applicants to relocate to the IFA.

[10] On November 14, 2023, the RAD dismissed the Applicants' appeal of the RPD's decision. In its analysis, the RAD found, on the first prong of the test, that the Applicants had not established that the agents of persecution had the motivation or the means to locate them in Delhi and in Mumbai.

[11] More specifically on the agents of persecution's motivation, or lack of, the RAD noted that the Principal Applicant's belief was that the police was acting on behalf of his business partner. The RAD did not find that the police believed the Principal Applicant was involved with militants since they released him upon the payment of a bribe. The RAD also found that there was insufficient evidence that the Principal Applicant was wanted for any crime that would motivate the police to search for him. The RAD found that the Principal Applicant was not a person of interest, that the police had no legitimate reason to initiate an interstate communication concerning the Principal Applicant and that its interest in him was localized.

[12] On the agents of persecution's means to locate the Applicants in Delhi or Mumbai, the RAD found that the Principal Applicant's dealings with the police were localized. In addition, the RAD:

- Found on a balance of probabilities, that the information about the Applicants would not be contained in the CCTNS database as the Principal Applicant is not a criminal, has no official arrests or charges against him, and there is no evidence having been issued, such as a FIR or an arrest warrant; his arrest and detention was thus extrajudicial;
- Found that there was insufficient objective evidence that the tenant verification system could be used to alert the local police in Delhi or Mumbai about the Applicants' whereabouts; and
- Did not find that the Applicants' family would be putting themselves in danger by refusing to provide the Applicants' whereabouts if they returned to India; in this regard, the RAD noted that while the Punjab police questioned the Principal Applicant's father about his son's whereabouts, there is no evidence that threats were made.

[13] Overall, the RAD found that the Applicants had not established that they faced a serious possibility of persecution or, on a balance of probabilities, a risk to life or of cruel and unusual punishment or treatment or danger of torture in the IFA.

[14] On the second prong of the test, the RAD found it was reasonable for the Applicants to relocate to the IFA. Again, the Applicants do not challenge this conclusion before the Court.

III. Analysis

A. *Standard of Review and Legal Framework*

[15] The RAD’s conclusions regarding the existence of a viable IFA must be reviewed on the reasonableness standard (*Djeddi v Canada (Citizenship and Immigration)*, 2022 FC 1580 at para 16 [*Djeddi*] 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).

[16] The Court must 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 (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). Any deficiencies in a decision must be “sufficiently central or significant to render the decision unreasonable.” (*Vavilov* at para 100) Reasons should be considered as a whole and within the context of the record, including the issues raised by the parties (*Vavilov* at paras 15, 85, 94, 99; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 61).

[17] 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 v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA) at 590 [*Thirunavukkarasu*] citing *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA) at 710 [*Rasaratnam*]; *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).

[18] The test for determining whether a viable IFA exists is two-pronged. 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. Before the RPD and the RAD, the Applicants bore the burden to establish that their agents of persecution had both the motivation and the means to locate them in the proposed IFA under the first prong. The Court has determined, and the parties have confirmed at the hearing, that the Applicants must establish both factors, in order to successfully challenge the first prong of the test (*Ortega v Canada (Citizenship and Immigration)*, 2023 FC 652 at paras 12-25; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428).

[19] Second, the conditions in the proposed IFA must be such that it is not unreasonable for the applicant to seek refuge there (*Djeddi* at para 21 citing *Thirunavukkarasu* and *Rasaratnam*).

[20] Before this Court, the Applicants bear the burden of demonstrating that the RAD's finding that an IFA was available was unreasonable (*Thirunavukkarasu* at 594, 597–98; *Vavilov* at para 100).

B. *The Decision Has Not Been Shown to be Unreasonable*

[21] The Applicants' first argument is that the RAD unreasonably concluded that the core of the Applicants' claim was in relation to the feud with the business partner in Dubai. This argument has no merit; the Principal Applicant's own evidence, in his Basis of Claim narrative and amended narratives, indicates that his business partner in Dubai threatened to involve the police and that he himself believed that his troubles with the police most likely resulted from this dispute with his business partner. In his narrative, the Principal Applicant indicates namely that (1) "He told me that he would teach me a lesson one day by involving police between"; (2) "it came in my mind that this police's visit had been made at the behest of Kerala person who had threatened me for dire consequences by involving police." and (3) "I strongly believe that behind this police problem is the same person named Najeeb Vattekkaran Abdul who cheated on me by taking money and when it comes to return the money he threat me". The transcript of the Principal Applicant's testimony at the hearing before the RPD confirms the same.

[22] Given the above, it is unequivocally clear that the RAD's conclusion is reasonable. It was thus open to the RAD to conclude, based on the Principal Applicant's own narrative and testimony, that the RPD did not err in finding that the core of the Applicants' claim was the Principal Applicant's dispute with his business partner in Dubai. This was critical in the RAD's decision and is also determinative in this application.

[23] Still regarding the RAD's conclusion on the lack of evidence of the agents of persecution's motivation, the Applicants take issue with the RAD's conclusion that the police

interest in the Principal Applicant is localized and, more specifically, with the RAD's findings that his arrest is extra judicial by taking into account that (1) he was released on a bribe, (2) there was no evidence of an interstate search for him, and (3) no First Information Report [FIR] or arrest warrant was issued against him.

[24] None of the arguments raised by the Applicants have merit and most are in fact speculative. The RAD, given the evidence before it, reasonably concluded that the arrest was extrajudicial given the circumstances and that there was therefore no evidence of any motivation to pursue the Applicants in the IFA. Moreover, the Applicants' argument invites this Court to reassess the evidence that was before the RAD, including the NDP, which, as the Minister submits, is not the role of the Court in a judicial review application (*Vavilov* at para 125; *Djeddi* at para 31).

[25] I am satisfied that it was open to the RAD to reach its conclusion that the police interest in the Principal Applicant was extrajudicial and that it was localized to his area. It was thus reasonable for the RAD to conclude that the police lacked the motivation to search for the Applicants in the IFA. As previously outlined, under the first prong, the Applicants bore the burden to establish that their agents of persecution had both the motivation and the means to locate them in the proposed IFA, these are cumulative factors. The Applicants' failure to raise a reviewable error relating to the RAD's conclusion on the police's lack of motivation to locate them in the IFA is sufficient to dismiss their application and allows the RAD decision to stand.

IV. Conclusion

[26] The Applicants have not raised any reviewable error. I am satisfied 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); the application for judicial review will consequently be dismissed.

JUDGMENT in IMM-15538-23

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

“Martine St-Louis”
Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-15538-23

STYLE OF CAUSE: SUKHJINDER SINGH, AMRINDER SINGH,
GURLEEN KAUR, GURJINDER KAUR v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 22, 2025

JUDGMENT AND REASONS: ST-LOUIS ACJ.

DATED: JANUARY 30, 2025

APPEARANCES:

Luciano G. Del Negro	FOR THE APPLICANTS
Suzanne Trudel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Luciano G. Del Negro Montreal, QC	FOR THE APPLICANTS
Attorney General of Canada Montreal, QC	FOR THE RESPONDENT