

Federal Court



Cour fédérale

Date: 20170725

Docket: IMM-118-17

Citation: 2017 FC 719

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 25, 2017

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

LAKHWINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, an Indian citizen of Sikh faith, is appealing from a decision of the Immigration and Refugee Board of Canada's Refugee Appeal Division [RAD] dated December 19, 2016, confirming the rejection by the Board's Refugee Protection Division [RPD] of his refugee protection claim under sections 96 and 97 of the *Immigration and Refugee*

Protection Act [Act] when he arrived in Canada in September 2015. The RPD found the claim to be not credible. It also found that the applicant had an internal flight alternative in Delhi or Mumbai. The RAD confirmed the RPD's finding regarding the internal flight alternative but did not find it necessary, in the circumstances, to rule on the RPD's finding of a lack of credibility.

[2] The facts underlying the refugee protection claim are relatively simple. The applicant, originally from a small village in the state of Punjab, fears reprisals from the village sarpanch and his henchmen because of a political disagreement that involved his father, now deceased, who apparently refused to join the political party with which the sarpanch is associated (the Akali Dal Badal party). The applicant also fears reprisals from the Indian police because of the sarpanch's significant influence.

[3] Two incidents are apparently at the heart of the applicant's decision to leave his country for Canada. First, in January 2014, the sarpanch apparently told the applicant that if he did not convince his father, a sympathizer of the rival party, the Congress Party, to stop criticizing him, he would be abducted or killed. The applicant purportedly complained, in vain, to the local police. On the advice of his father, he apparently took refuge in the city of Ludhiana, where he has family. In June 2015, 18 months later, the applicant's father was reportedly killed, presumably by the sarpanch's henchmen. A note indicating that the applicant would suffer the same fate was apparently found close to the body. When the applicant returned to Ludhiana after his father's funeral, he was allegedly informed that the sarpanch's henchmen were looking for him in that city. The applicant purportedly sought protection from the Ludhiana police, but they apparently instead threatened him with reprisals if he refused to support the sarpanch's political

party. At that point, the applicant allegedly decided to leave for Canada with the help of a facilitator.

[4] In addition to finding the applicant's testimony vague and evasive, the RPD concluded that the applicant's refugee protection claim contained significant omissions and contradictions, namely regarding his political activities and the date of his father's death. Regarding an internal flight alternative, the RPD determined that the applicant did not prove that he was wanted by the Punjab authorities and that, in any event, he did not have a profile such that the Indian authorities would look for him in Delhi or Mumbai. Regarding the possibility that the sarpanch and his henchmen could find him in either of those cities, the RPD found that the applicant did not demonstrate that they had the ability or willingness to do so. The RPD also found that the applicant did not demonstrate that it would be objectively unreasonable for him to move to one of those two cities. It noted that there are a number of Sikh communities outside of Punjab, including in Delhi and Mumbai, and that Sikhs in general are able to, not only in Punjab but elsewhere in India, practise their religion, find housing and work.

[5] As already stated, the RAD ruled only on the internal flight alternative. Even though it recognized that there is, in police stations in India, a register on which landlords must register the names of their tenants, which would, according to the applicant, in his case, render illusory any idea of an internal flight alternative, the RAD noted from the documentary evidence that communications between police forces of the various Indian states is limited to major crime cases and that as a result, the registration of the applicant's name on the register, be it in Delhi or Mumbai, is unlikely, assuming that his fear is well-founded, to put him at risk. It noted the same

finding from a response to information request dated May 2016, which arose after the RPD's decision. It concluded the following:

[48] Information gleaned from the May 10, 2016 RIR reveals that in India "there is little inter-state police communication except for cases of major crimes like smuggling, terrorism, and some high profile organised crime." Moreover, it is mentioned that "police stations across India are virtually unconnected islands in the case of crime and criminal tracking. There is no system of effective data storage [...] sharing and accessing data and there is no single system by which a police unit can talk to another directly." Moreover, programs aimed at linking databases have been stalled for years in India. Some information is shared on the Zonal Integrated Police Network (ZIPNET) however ZIPNET is focused on information related to heinous cases, most wanted criminals, missing and found children, unidentified dead bodies or persons found; and stolen, unclaimed vehicles.

[49] The Appellant's profile does not correspond to the exceptional type of situation which would prompt the police to share information with counterparts in different States. The Appellant speculates that there is a police report or warrant. The Appellant suggests that the village Sarpanch wields power and has influence over the police. However, even if I accept this information at face value, the documentary evidence points to the fact that the police in Delhi or Mumbai would not contact the Punjab police in the course of the tenant registration process.

[50] Looking at the situation objectively, I also note that the Appellant's political profile is not of sufficient gravity to lead the police in Punjab to want to pursue the Appellant across State lines in Delhi or Mumbai. To reiterate, documentary evidence points to the fact that the current practice in India is only to track down individuals across State lines in the most extreme of cases. This does not correspond to the Appellant's profile. Rather, the Appellant's evidence is that he is a supporter of the Congress party in a small village comprised of 35 families. Despite the existence of conflict between the Congress party and supporters of the Akali Dal Badal party in the Appellant's village, there is no indication that the Appellant is a serious threat or involved in serious crimes or perceived to be involved in serious crimes to the extent that he would be pursued anywhere in India.

[6] The RAD, like the RPD before it, found that the applicant failed to demonstrate that a move to Delhi or Mumbai would be unreasonable.

[7] The applicant argues that the RAD erred by failing to consider the documentary evidence indicating that it is not just high level criminals who are sought by the authorities throughout India and that it erred by failing to consider the sarpanch's ability to influence the police and to thus incite them to search for the applicant regardless of where in India he is.

II. Issue and standard of review

[8] The issue here is whether, as argued by the applicant, the RAD, by finding that there is an internal flight alternative, committed an error warranting the intervention of the Court based on section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7.

[9] It is settled law that RAD decisions are reviewable by this Court on the basis of the deferential standard of reasonableness (*Minister of Citizenship and Immigration v Huruglica*, 2016 FCA 93 at para 35 [*Huruglica FCA*]; *Paye v Canada (Citoyenneté et Immigration)*, 2017 CF 685 at para 3; *Nazari v Canada (Citizenship and Immigration)*, 2017 FC 561 at para 12; *Gu v Canada (Citizenship and Immigration)*, 2017 FC 543 at para 20). This standard is also the applicable standard of review for issues related to internal flight alternatives as these are questions of mixed fact and law within the RPD's expertise (*Okohue v Canada (Citizenship and Immigration)*, 2016 FC 1305 at para 10; *Zaytoun v Canada (Citizenship and Immigration)*, 2014 FC 939 at para 10; *Lopez Martinez v Canada (Citizenship and Immigration)*, 2010 FC 550 at para 14; *Pedraza Corona v Canada (Citizenship and Immigration)*, 2010 FC 508 at para 5)

and now also within that of the RAD, as it too is a specialized administrative tribunal in this regard (*Huruglica FCA*, at para 32; *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 at paras 54-55).

[10] According to this standard of review, the Court can only interfere with RAD decisions if they fall outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

[11] In this case, I find that there is no need to intervene.

III. Analysis

[12] To rebut an internal flight alternative, a refugee claimant must establish, on a balance of probabilities, that there is a serious risk of persecution in the cities where the RPD found that such alternative exists. The refugee claimant must also demonstrate that, in light of all the circumstances, the situation in that region of the country is such that it would be objectively unreasonable for him or her to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at para 47, [1991] FCJ No 1256 (QL); *Katinszki v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1326 at para 11 [Katinszki]; *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 600 at para 4).

[13] As already stated, the applicant in this case contends that the RAD failed to consider the documentary evidence showing that it is not just high level criminals who are likely to be sought

by the authorities throughout India (Certified Tribunal Record, p 115). However, I note from that evidence, dated May 2013, that opinions vary. It shows that the police in Punjab, as noted by the RAD, will try to locate someone who is of interest to them in extreme cases only and that to do so, a court order and assistance from the police from other states is generally required. It also indicates that while the Punjab police, according to certain observers, engage in, with impunity, practices of fabricating charges or register people on lists of high profile individuals, those practices generally concern Sikhs who advocate for independence, oppose the party in power, stand up for victims of the violence that was committed against the Sikh community in 1984-1985, criticize the police or are members of Sikh youth groups (Certified Tribunal Record, p 115).

[14] The documentary evidence also shows, according to an access to information request dated May 14, 2012, that each Indian state has its own police force and that they act independently of one another. According to that piece of evidence, exchanges of information between police forces are limited and police forces are not required to disclose movements of persons of interest to other police forces. It also shows that India does not have a national communication infrastructure that connects the various police forces (Certified Tribunal Record, p 31).

[15] After the RAD provided the applicant with an opportunity to comment on this, it also examined documentary evidence from after the RPD's decision, which, as mentioned, reiterates the prior findings that the exchange and storage of data between police forces is limited and inefficient, and reserved to the most serious cases when it does occur (Certified Tribunal Record,

p 19). The RAD was entitled to give weight to the more recent evidence and to prefer it over the excerpts from the evidence from 2013, which the applicant claims it did not consider and that, when read as a whole, does not clearly and convincingly contradict, as previously noted, the RAD's finding on this issue (*Ramos Villegas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 699 at paras 18 and 20; *Rueda v Canada (Minister of Citizenship and Immigration)*, 2009 FC 828 at paras 63-64; *Huertas Morales v Canada (Minister of Citizenship and Immigration)*, 2009 FC 216 at para 20; *Rodriguez Zambrano v Canada (Minister of Citizenship and Immigration)*, 2008 FC 481 at para 60; *Yankilevitch v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 1546 at para 10).

[16] By making the finding that the applicant did not have a profile such that the police in Punjab would search for him or find him in either of those two locations or such that the police in those two cities would denounce him to the Punjab police despite the fact that his name may be on the tenant register kept by the police in Delhi or Mumbai, the RAD did not, in my opinion, commit an error that warrants the intervention of the Court. Like the RPD, the RAD pointed out, and it is important to mention this, that the applicant did not prove that a search warrant or an arrest warrant was issued against him.

[17] The RAD did not disregard the sarpanch's ability to influence the Punjab police, contrary to the applicant's claim. Taking it for granted for the purposes of its analysis, although the sarpanch in question here is a sarpanch in a small village of 35 families, the RAD found, based on the documentary evidence, that the police in Delhi or Mumbai would not contact the police in Punjab on the sole basis that the applicant's name appears on their tenant register. Once again, I

cannot state that this conclusion is unreasonable. In my view, there is undoubtedly a rational basis for it in the evidence that was before the RAD.

[18] This application for judicial review will therefore be dismissed. Neither of the parties requested that a question be certified for the Federal Court of Appeal. I am also of the view that there is no basis for certifying a question.

JUDGMENT in IMM-118-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question is certified.

“René LeBlanc”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT:** LEBLANC J.

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