

Federal Court



Cour fédérale

Date: 20200204

Docket: IMM-2457-19

Citation: 2020 FC 191

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 4, 2020

PRESENT: The Honourable Associate Chief Justice Gagné

BETWEEN:

SANDEEP SINGH SIDHU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] Mr. Singh Sidhu is seeking judicial review of a decision by the Refugee Appeal Division [RAD] finding that he is not entitled to Canada's protection because he has internal flight alternatives (IFAs) in his own country, in the Indian cities of New Delhi, Mumbai or Kolkata.

[2] This is an issue that, although it was discussed during the hearing before the Refugee Protection Division [RPD], was not decided by it, because it held that the applicant had not credibly established that the members of the Congress party in Punjab would represent a threat to him because of his political opinions, if he were to return to India.

[3] The RAD found that the RPD committed certain errors in its assessment of the applicant's credibility but opted, in its analysis of the file, to take into account only those issues of credibility related to the IFAs.

[4] The applicant submits that the RAD erred in its analysis of the proposed IFAs and that the Punjabi police would be able to find him in the suggested cities using the tenant registration system, which is increasingly being consulted in India.

II. Decision under review

[5] The RAD informed the applicant that it would analyze the IFA issue, provided him with the most recent information in the National Documentation Package [NDP] and gave him an opportunity to make further submissions on this point.

[6] The RAD began by analyzing the first prong of the IFA test, namely, the possibility that the applicant would be persecuted in New Delhi, Mumbai or Kolkata, the cities suggested by the RAD.

[7] The RAD took into account the information contained in the NDP, noting that the tenant registration system exists in India and is applied, but also that each state has an independent police force that has no ties with the police forces in the other states. It therefore concluded that the tenant registration requirements were not likely to cause the local police to communicate with the Punjabi police. Moreover, the Punjabi police would need a court order and the cooperation of the police in the states where the proposed cities are located to track down a suspect who has moved there.

[8] The RAD also reviewed the information about the electronic database known as the Crime and Criminal Tracking Network & Systems (CCTNS), used at most Indian police stations. It noted however, that the police forces continue to work in silos and that the CCTNS is not yet functional throughout the country. Moreover, it is mainly used for major crimes such as smuggling, terrorism and organized crime activity. Because there is no evidence that a notice of criminal offence has been issued against the applicant, there is very little chance that his name would appear there.

[9] The RAD also noted that the acts of violence committed against the applicant were perpetrated by members of the Congress party rather than by the police and that the applicant's political activities were minimal and occurred more than six years ago. It was therefore unlikely that the police in his village would still be searching for him after all these years of absence.

[10] For all these reasons, the RAD held that the applicant would not be subjected to a risk to his life or his security if he were to return to one of the proposed Indian cities.

[11] With respect to the second prong of the test, the RAD noted that the applicant had the burden of persuading it that it would be unreasonable to ask him to relocate to one of the proposed Indian cities.

[12] The RAD concluded that the applicant had failed to meet his burden and that he had not demonstrated that he could not live elsewhere in India. He had the core skills necessary to find employment and would be able to adapt to a new environment. Furthermore, the large Sikh communities in India's major cities would facilitate his integration.

[13] The RAD was therefore of the view that while the RPD did commit some errors in its analysis of the applicant's credibility, he had not established that there would be a serious possibility of persecution or a threat to his life if he were to return to New Delhi, Mumbai or Kolkata or that it would be objectively unreasonable for him to move to one of those cities.

III. Issue and standard of review

[14] This application for judicial review raises only one issue:

Did the RAD err in its analysis of the first prong of the test to determine whether the applicant had an internal flight alternative in his country?

[15] The standard of review applicable to the assessment by the RAD of an IFA has long been the standard of reasonableness (*Figueroa v Canada (Citizenship and Immigration)*, 2016 FC 521 at para 13). The Supreme Court of Canada's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, has not changed this.

IV. Analysis

[16] It is well established that international protection is a measure of last resort; a refugee claimant must first attempt to seek state protection from his or her own country and, if necessary, relocate in his or her own country before claiming refugee protection elsewhere (*Brahim v Canada (Minister of Citizenship and Immigration)*, 2019 FC 503, at para 27).

[17] In his application for judicial review, the applicant does not challenge the RAD's conclusion regarding the first prong of the test. He therefore has the burden of demonstrating that the RAD wrongly decided that he would not be subjected to a risk if he were to return to New Delhi, Mumbai or Kolkata.

[18] I am of the view that the applicant has not discharged this burden and that he has failed to establish a possibility of persecution or harm in the event of his return to one of the proposed Indian cities.

[19] The applicant is essentially arguing that the RAD disregarded a significant amount of the information contained in the NDP and that it preferred the 2016 version to the more recent 2018 version.

[20] First, the 2018 version is simply an update to the previous version; it neither cancels it nor completely replaces it.

[21] A close reading of the relevant excerpts of both versions of the NDP supports a finding that the tenant register, in which landlords are required to register their tenants under threat of reprisals, is generally not consulted beyond the state in which the tenant resides.

[22] It is true that at the time a tenant is registered, the local police authorities offer a criminal record check service. However, as noted by the RAD, this check is conducted using another system, the CCTNS. As the RAD also noted, this system contains information entered by the various police forces throughout the country. It also contains First Information Reports (FIRs) relating to complaints of criminal activity filed by the victim. The FIR contains information about the complainant, the incident, the witnesses to the incident and, if available, the suspect.

[23] In my view, the RAD did not err in concluding that there was no evidence on the record supporting a finding that the applicant's name could be found in the CCTNS.

[24] First, the applicant left India before the system was introduced.

[25] Second, the applicant alleges that he would be subjected to a risk in India on account of his political opinions, as a supporter of the Akali Dal (Amritsar/Mann) party and the son of one of that party's key members. He was allegedly threatened and assaulted by the local members of the Congress party in 2012. He also alleges that he was arrested twice by the police and beaten for having organized political rallies. Members of the Congress party allegedly came to his house in 2013 after he left India and beat his brother to death. The applicant's father tried unsuccessfully to obtain help from the police.

[26] As there is no evidence that a complaint of criminal activity has been brought against the applicant, it is highly unlikely that his name would be found in the CCTNS. It is also highly unlikely that members of the Congress party of Punjab would search for him in one of the proposed Indian cities, let alone the Punjabi police.

[27] As for those individuals who are not criminals identified in the CCTNS but are nevertheless persons of interest for a local police force, the NDP suggests that their names may be included in a database containing classified information owned by the local police service, and that the various police services that use it do not share this information.

[28] The applicant's argument to the effect that the CCTNS, the tenant registration system and some classified system containing a list of individuals of interest to a given police force are all somehow connected is simply not supported by the objective documentary evidence.

[29] In the circumstances, I am of the view that the RAD took into account the documentary evidence available to it and that it reasonably concluded that the applicant would not be at risk if he were to return to one of the proposed cities in India.

V. Conclusion

[30] Because the applicant can seek refuge within his own country, his application for judicial review is dismissed. The parties have proposed no question of general importance for certification and the facts of this case do not give rise to any.

JUDGMENT in IMM-2457-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
This 12th day of February 2020.

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2457-19

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APPEARANCES:

Claude Whalen

FOR THE APPLICANT

Philippe Proulx

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claude Whalen
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT