Federal Court  Cour fédérale

Date: 20200731

Docket: IMM-2625-19

Citation: 2020 FC 807

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, July 31, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

KULWANT SINGH
KULVINDER KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Appeal Division (RAD), which dismissed the appeal and upheld the decision of the Refugee Protection Division (RPD) to the effect that Kulwant Singh and Kulvinder Kaur (the applicants) were neither

refugees within the meaning of the Convention nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

II. Statement of facts

[2] The applicants are citizens of India. Mr. Singh was a farmer and Ms. Kaur was a housewife. They lived in the Indian state of Uttarakhand. On October 29, 2013, three armed terrorists came to the applicants' farm and asked them for shelter. The applicants allowed them to spend the night there and the terrorists left around four in the morning.

[3] On December 27, 2013, Uttarakhand police officers searched the applicants' home and arrested Mr. Singh. The officers questioned him about his relationship with the terrorists. A friend of his and the village sarpanch (elected chief) intervened and paid the police officers a bribe to release Mr. Singh, who promised to provide the authorities with any information that might lead to the arrest of the terrorists. While he was detained, Mr. Singh was beaten and had to be hospitalized.

[4] In May 2014, Mr. Singh was arrested again because he had helped one of the terrorists he had sheltered in October 2013, whom he had not recognized, to find a job on his neighbour's farm. He again had to pay a bribe to be released. While in detention, he was once again beaten by the officers and had to go to the hospital to have his injuries treated. Mr. Singh agreed to report to the police station on a monthly basis for verifications.

[5] A few days before his third arrest in July 2014, Mr. Singh took temporary refuge with a friend in the neighbouring state of Punjab. Police officers went to his home and asked Ms. Kaur

why Mr. Singh had not reported to the police station as required. Under threat of violence, Ms. Kaur told the officers where her husband was, and he was subsequently arrested on July 2, 2014. After two days, the Punjabi police authorities transferred him to the police in Uttarakhand. Mr. Singh was finally released after paying a bribe. During his detention, both police forces beat him severely, and he had to be hospitalized for seven days because of his injuries.

[6] The applicants left India for Canada in February 2015. They filed their refugee claim in June 2016, 16 months after their arrival in Canada.

[7] On June 15, 2017, the RPD rejected their claim for refugee protection. The RPD found that the applicants lacked credibility, particularly given Mr. Singh's memory problems and discrepancies between their stories. The RPD decision noted that the Minister of Citizenship and Immigration (the respondent) had indicated that there was an internal flight alternative (IFA) in India. According to the RPD, this issue was not explored further because the applicants' claim was rejected on the basis of their lack of credibility.

[8] The applicants appealed this decision to the RAD. The respondent proposed the cities of Delhi and Mumbai as IFAs. Prior to the hearing, the RAD invited the applicants to make submissions with regard to the availability of an IFA in those two cities, but the applicants did not respond.

III. The RAD decision

[9] The RAD rendered its decision on March 27, 2019. It dismissed the appeal, but for different reasons than the RPD. The RAD rejected the RPD's finding that the applicants' fear of

returning to India was not credible despite a contradiction with respect to the date that Mr. Singh's second hospitalization had begun and the delay between the applicants' arrival in Canada and the filing of their refugee claim. The RAD found as follows:

> [21] . . . the RAD notes that these two elements alone are insufficient to reach the conclusion that all the appellants' allegations are not credible. . . . The RAD is of the view that, with the exception of the two allegations mentioned above, most of the allegations are credible.

[10] The RAD determined that Delhi and Mumbai are indeed IFAs. According to the RAD, it was unlikely that the agents of persecution—the police in Uttarakhand—would be informed if the applicants settled in Delhi or Mumbai, and it would not be unreasonable for the applicants to seek refuge there. The RAD therefore determined that the applicants were neither Convention refugees nor persons in need of protection.

[11] In conducting the IFA analysis as described in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*] and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*], the RAD noted that it had two be carried out in two steps and that the onus was on the applicants.

[12] The RAD began by considering the first step: whether the applicants face a risk of persecution at the proposed IFA location. In considering the likelihood of the Uttarakhand police discovering the applicants' new location, the RAD noted that the National Documentation Package (NDP) on India indicates that Indian police forces in one state do not often communicate with those in other states, and that neither Delhi nor Mumbai are located in Uttarakhand or Punjab. The NDP also indicates that, despite the implementation of a new police

intelligence database, mandatory tenant verifications in some major cities, including Delhi and Mumbai, are generally ineffective due to a lack of police capacity and resources. In addition, the RAD did not believe that the Uttarakhand police had filed a "First Information Report" (FIR), a document setting out a formal charge against an individual, because Mr. Singh was released three times rather than remaining in custody, and the applicants "also did not testify about the fact that the Uttarakhand police allegedly threatened to lay formal charges against them" (para 28).

[13] In considering the second step, whether it is reasonable for the applicants, given their personal circumstances, to seek refuge in the proposed IFA, the RAD noted that the applicants have very little education and are of the Sikh religion. However, the NDP indicates that there are Sikh communities in both cities and that the fundamental rights of the Sikh minority are generally respected. The RAD concluded at paragraph 33 of its decision that "the conditions in Delhi and Mumbai would not jeopardize the life and security of the [applicants]." The RAD therefore concluded that the applicants would have a viable IFA in either Delhi or Mumbai.

IV. Issues

[14] The applicants raise two issues, namely, whether the RAD's findings on credibility and the existence of an IFA are reasonable. At the hearing, however, the applicants acknowledged that the RAD's finding as to their credibility with respect to their fear of returning to India is not really at issue, given that the RAD essentially agreed with their position.

[15] That leaves only one issue, which is whether the RAD's finding that the applicants have a viable IFA in Delhi or Mumbai is reasonable.

[16] The standard of review applicable to a determination on the availability of an IFA is that of reasonableness (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 727 at para 7).

[17] Moreover, the recent decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] does not change the applicable standard of review. In the specific circumstances of this case and, considering paragraph 144 of *Vavilov*, it is not necessary to request submissions from the parties on the appropriate standard or its application. As in the Supreme Court's decision in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paragraph 24 [*Canada Post Corp*], "no unfairness arises from [the application of the framework established in *Vavilov* to this case] as the applicable standard of review and the result would have been the same under the *Dunsmuir* framework."

[18] A judicial review on the deferential standard of reasonableness includes determining whether the process and the decision indicate that the decision maker actually conducted an "analysis" of the evidence, applying the appropriate legal test, and that the analysis underlying the decision is "based on reasoning that is both rational and logical" (*Vavilov* at para 102).

[19] In *Canada Post Corp*, the Supreme Court of Canada also stated the following :

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

> . . .
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100). . . .

V. Analysis

[20] As for the first step of the IFA analysis, the applicants allege that there is a serious risk of persecution by the police if they relocate to Delhi or Mumbai. They argue that, since terrorism-related crimes are taken seriously, there is still a significant likelihood that police authorities have filed an FIR against Mr. Singh. In addition, even a relatively ineffective database or a rare inter-state police communication, which in their case would be more likely because of the nature of the charges, could put them at a high risk of persecution.

[21] With respect to the second step, the applicants allege that the RAD failed to consider the difficulties they are likely to encounter in obtaining employment as well as the religious discrimination they may face in Delhi or Mumbai. Because of these obstacles, they argue that it is unreasonable to expect them to relocate to Delhi or Mumbai.

[22] I am not persuaded by these arguments. The RAD's finding of an available IFA is well founded in light of the evidence and the applicable law, and its analysis is clear and complete. The RAD applied the test set out in the case law, citing *Rasaratnam* and *Thirunavukkarasu*, and the applicants do not suggest that this is an error of law. Rather, their argument focuses on the RAD's assessment of the evidence.

[23] With respect to the first step of the analysis, the RAD found that the applicants did not demonstrate, on a balance of probabilities, that there is a serious possibility of persecution or a danger of torture, a risk to their lives, or a risk of cruel and unusual treatment or punishment if they settled in the area proposed as an IFA. The RAD considered the applicants' evidence as well as objective evidence and explained its analysis as follows (at para 28):

> The RAD is of the opinion that it is highly unlikely that the appellants' information would be recorded in the CCTNS [Crime and Criminal Tracking Network & Systems] without them being formally charged or otherwise involved in any crime. Therefore, it is unlikely that the appellants would be flagged in the CCTNS if the Delhi or Mumbai police were to search for their names in this database. Finally, although a document in the NDP indicates that "there is little inter-state police communication except for cases of major crimes like smuggling, terrorism, and some high profile organised crime", the RAD notes that the appellants themselves are not suspected of being terrorists and the fact that the Uttarakhand police released Mr. Singh from custody three times. According to the RAD, the appellants' profile is not of sufficient interest for them to be in any police database or on a list of persons of interest.

[24] The applicants argue that the RAD's conclusion is speculative and represents a narrow interpretation of the documentary evidence. They cite the NDP on India, which states that "there is little inter-state police communication except for cases of major crimes like smuggling, terrorism and some high profile organised crime." The applicants submit that the crime of which they are falsely accused is important to the Indian police and should be considered a "major crime".

[25] I am not convinced that the RAD did not consider all of the evidence, including the NDP. The RAD noted that there is no evidence on the record to show that a formal charge or FIR was issued against Mr. Singh, or that his name is in the police computer system. According to

objective documentary evidence, not all police forces use this system, and it does not appear to be operational across the country.

[26] Moreover, despite the fact that the police suspected the applicant of aiding terrorists, the evidence on the record indicates that the applicant was released by the Uttarakhand police on three occasions in exchange for a bribe. There is no indication in the evidence that the police threatened Mr. Singh with formal charges. The RAD concluded that if the police really thought the applicant was a terrorist, they would not have released him. This conclusion is based on objective documentary evidence as well as the applicant's personal circumstances.

[27] As for the second step of the IFA analysis, life in Delhi or Mumbai will certainly have its challenges for the applicants. But the RAD fully understood and gave due consideration to their personal circumstances, including their status as members of a religious minority and their level of education. There will be a Sikh community to support the applicants, and their lives and safety will not be jeopardized. It is therefore reasonable for the applicants to seek refuge there. Moreover, I would add that the onus of demonstrating that an IFA is unreasonable in a given case is quite an exacting one (*Elusme v Canada (Citizenship and Immigration)*, 2020 FC 225 at para 25).

[28] A similar situation was analyzed in *Singh v Canada (Citizenship and Immigration)*, 2014 FC 269. The applicant was from the state of Punjab. He also alleged that the violent and corrupt local police force could find him if he were to move to Mumbai, which had been proposed as an IFA. The Court considered the evidence submitted with respect to the Indian police and determined that it was reasonable for the RPD to conclude that the police would have no intention of looking for the applicant throughout India, as he was also suspected of having links

to terrorists, but not of being a terrorist. The decision notes at paragraph 5 that "[a]lthough it is possible to locate a person of interest in a different state if the police are determined to do so, officers rarely exert such efforts."

[29] I would point out that, in that case, the police also released the applicant on three occasions after receiving a bribe each time. Moreover, the police in a neighbouring state only located him with the assistance of a family member; the Court noted that this was not an example of information sharing across state lines. The judge found that the IFA analysis was not unreasonable and dismissed the application for judicial review.

[30] In this case, the applicants argue that the RAD erred in concluding that Mr. Singh does not have the profile required for Indian authorities to search for him in Delhi or Mumbai. However, this is a conclusion based on an assessment of individual evidence and objective documentation, and it is not the role of the Court on judicial review to reweigh and reassess the evidence considered by the decision maker (*Vavilov* at para 125).

VI. Conclusion

[31] The applicants have not satisfied me that the RAD's decision was unreasonable. The RAD applied the test set out in the case law and considered all of the evidence, including the relevant information in the NDP on India. The RAD's decision was "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada Post Corp* at para 31, citing *Vavilov* at para 85). The decision is therefore reasonable.

[32] For all these reasons, the application for judicial review is dismissed.

[33] There is no question of general importance to be certified.

JUDGMENT in IMM-2625-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question of general importance to be certified.

"William F. Pentney"
Judge

Certified true translation
This 21st day of August 2020

Margarita Gorbounova, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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