

Federal Court



Cour fédérale

Date: 20211101

Docket: IMM-4071-20

Citation: 2021 FC 1163

Toronto, Ontario, November 1, 2021

PRESENT: Justice Andrew D. Little

BETWEEN:

MANPREET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] In this application for judicial review, Mr Manpreet Singh asks the Court to set aside a decision of the Refugee Appeal Division (the “RAD”) dated August 4, 2020. The RAD concluded that Mr Singh is not a Convention refugee nor a person in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”) because he has several internal flight alternatives available to him in India.

[2] For the reasons below, I conclude that the application should be dismissed.

I. Mr Singh's claim for refugee status in Canada

[3] Mr Singh is a citizen of India. He arrived in Canada on August 10, 2014 and claimed refugee protection on October 2, 2014.

[4] Mr Singh claimed that he would be persecuted on return to India because he is a supporter of the Shiromani Akali Dal Amritsar ("SADA") political party in his home state of Punjab. Mr Singh's father was a prominent member of SADA and an activist, who gave public speeches on behalf of the party for many years. In his refugee claim, Mr Singh stated that he had been involved in SADA himself as a volunteer since August 2012, a role in which he assisted his father, volunteered at political events and helped organize meetings and rallies.

[5] Mr Singh based his claim for refugee protection on two events. The first occurred in January 2013 at his parents' home, where Mr Singh also lived. Four masked assailants forcefully entered the home looking for him. When they learned that Mr Singh was not home, they assaulted his father. A neighbour intervened and the assailants left. His father had to go to the hospital for treatment. His father contacted Mr Singh and told him not to come home that day.

[6] Mr Singh testified before the RPD that before leaving, the persons who invaded his parents' home and attacked his father warned him to stop preaching and spreading the message of SADA or one day they would kill his son (i.e. Mr Singh, who has no brothers).

[7] Mr Singh's evidence was that SADA members face persecution by another political party, Shiromani Akali Dal Badal, known as SADB. Mr Singh claimed that it was members of SADB (at least) who carried out the home invasion. (The RAD stated that Mr Singh's testimony

about the political affiliation of the invaders eventually changed to also include members of another rival political party in Punjab, the Congress Party.)

[8] A second incident occurred in June 2014. Strangers came to Mr Singh's village and asked about him. Someone in the village advised his father that strangers were looking for Mr Singh. His father contacted him and again told him not to return home that day.

[9] Because of these incidents, Mr Singh's father and relatives decided that Mr Singh's life was in danger and that he should leave the country. He did so on August 8, 2014 and arrived in Canada on August 10, 2014. As already noted, he claimed refugee status in Canada in October 2014.

[10] Since arriving in Canada, Mr Singh has learned that police are looking for him in India. He advised the Refugee Protection Division ("RPD") that as a result of allegations made by an opposition political party, the police falsely accuse him of joining "the militants" and of threatening to kill members of the opposition.

[11] In 2015, police arrested Mr Singh's father and several other members of SADA. His father was detained and assaulted. The police asked his father about Mr Singh and accused them both of working for the militants. After his father was released from detention, he went into hiding. His mother also left the family home. The police eventually located his father in hiding and arrested him.

[12] No one has heard from Mr Singh's father since January 2016. The applicant submitted that he has been "disappeared" by SADA's political rivals or police, working on the political rivals' behalf. The police continue to harass Mr Singh's family members.

[13] Mr Singh's position before the RPD and the RAD was that he was not safe anywhere in India because he supported SADA and because he was falsely labelled a militant, like his father. He believes he will be arrested upon arrival in India.

[14] There are additional important aspects of the evidence, as noted by the RAD. First, Mr Singh testified that SADB accuses him, and SADA as a whole, of being a terrorist and a terrorist group respectively. Second, the SADB party was in government in Punjab when the two incidents described above occurred. Third, Mr Singh gave evidence that he feared the police because they were in the hands of the political party in power (i.e. SADB, at least in August 2014 when the applicant left India), and the police would do what the government told them to do.

[15] Both the RPD and RAD rejected his claim for refugee protection. Both the RPD and the RAD concluded that Mr Singh had an internal flight alternative ("IFA") within India, in each of Mumbai, Kolkata and New Delhi.

[16] In this judicial review application, Mr Singh submits that the RAD's decision on the availability of the IFAs was unreasonable and should be set aside.

II. Standard of Review

[17] The parties agree that the standard of review is reasonableness as described by the Supreme Court of Canada in *Canada (Minister of Citizenship & Immigration) v Vavilov*, 2019 SCC 65.

[18] Reasonableness review entails a sensitive and respectful, but robust, evaluation of administrative decisions: *Vavilov*, at paras 12-13. The starting point is the reasons provided by the decision maker, which must be read holistically and contextually and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 84, 91-96, 97, and 103.

[19] The court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, at paras 85 and 99.

[20] The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

III. The RAD's Internal Flight Alternative Analysis

[21] The Federal Court of Appeal set out a two-prong test for an IFA in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) ("*Rasaratnam*"), at paras 8-10. That test requires that the RAD be satisfied, on a balance of probabilities, that (1) there is no serious possibility of the claimant being persecuted in the proposed IFA; and (2) in all the

circumstances, including circumstances particular to the claimant(s), conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there. The claimant(s) bear the onus to show that the proposed IFA is unreasonable.

[22] With respect to the first prong of the IFA test in *Rasaratnam*, Mr Singh submitted that the RAD make a reviewable error by:

- ignoring his testimony; failing to consider his evidence of actual, subjective fear of persecution in its assessment of the first prong; and preferring documentary evidence over his testimony about his subjective fear; and
- agreeing with the RPD's reasons concerning the population and geography of India in a contradictory fashion. The RPD concluded that the applicant would be safe in Mumbai, Kolkata and New Delhi because, among other reasons, they are big cities with large populations, meaning it would be difficult for agents of persecution to find the applicant there. The applicant submitted that the RAD agreed with these conclusions but nevertheless has determined in other decisions that large urban areas cannot be assumed to be an IFA.

[23] With respect to the second prong of the IFA test in *Rasaratnam*, Mr Singh submitted that the RAD failed to give appropriate consideration and weight to the evidence that his presence in one of the IFA cities would eventually become known to the Indian police, who could then funnel the information of his whereabouts to the agents of persecution. For this submission, the applicant referred to *Abbas v Canada (MCI)*, 2019 FC 1576 (Ahmed J.) and *Ng'aya v Canada (MCI)*, 2006 FC 1136 (Barnes J.).

[24] I will address each of Mr Singh's arguments in turn.

A. *The first prong in Rasaratnam*

[25] I am unable to accept Mr Singh's first submission that the RAD ignored his oral testimony. The RAD's decision had a section entitled "Testimony – IFA – first prong" (RAD Reasons, at paras 6-9). After that, the RAD expressly referred to his testimony during its analysis at paragraphs 24, 25, 26, 28, 29, 30, 36 and 38.

[26] The applicant's second submission was that the RAD did not expressly consider his testimony about his subjective fears of returning to India. Relying on *Amit v Canada (MCI)*, 2012 FC 381 (Martineau J.), the applicant argued that the RAD's failure to consider his subjective fears in its assessment of the first *Rasaratnam* prong made the RAD's decision unreasonable. At the hearing, the applicant's counsel referred to Mr Singh's testimony about fears arising from the disappearance of his father and the family's fears as a whole arising from the incidents described above.

[27] The respondent submitted that testimony about an applicant's subjective fears is not determinative of whether an area is a viable IFA (citing *Onyeme v Canada (MCI)*, 2018 FC 1243 (Russell J.), at para 37; and *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 (Kane J.), at para 32).

[28] In *Amit*, Martineau J. reasoned as follows:

[2] It must be remembered that the concept of IFA is inherent to the very definition of Convention refugee. The test for determining whether a refugee claimant has an IFA involves two steps. First, there must be no serious possibility that an individual would be

persecuted or subjected to persecution, or to a danger of torture or to a risk to his life or of cruel and unusual treatment or punishment in the proposed IFA; and second, the conditions of the proposed IFA area must be such that it would not be unreasonable for the individual to seek refuge there: *Rasaratnam v Canada (Minister of Citizenship and Immigration)*, [1992] 1 FC 706 (FCA).

[3] The onus is on a claimant to prove actual and concrete evidence of conditions which would jeopardize his or her life (*Morales v Canada (Minister of Citizenship and Immigration)*, 2009 FC 216). In this respect, the Board's failure to consider the specific risks feared by a claimant in an IFA analysis will constitute an error of law (*Velasquez v Canada (Minister of Citizenship and Immigration)*, [2010] FCJ 1496 at paras 15-22).

[4] In the decision under review, the conclusion that an IFA exists is not reasonable. It is not challenged that the fear of persecution of the applicant is based on a Convention ground, notably his imputed political beliefs. The whole reasoning of the Board is based on the erroneous assumption that the applicant would be a low profile Sikh militant, but the true question in this case is whether, if we believe the applicant's story, a young Hindu man who was detained, fingerprinted, photographed, interrogated and tortured by the New Delhi police, because of his alleged links with a suspected terrorist following the 2008 Mumbai bombing, has a well-founded fear of persecution throughout India.

[5] Instead of focusing on this fundamental aspect of the asylum claim, the Board relies on a documentary evidence suggesting that “while the Punjab police may be serious about pursuing Sikhs anywhere in India whom they view as hard-core militants, in practice only a handful of militants are likely to be targeted for such long-arm law enforcement” (India National Documentation Package, May 31, 2010, Tab 2.5). Be that as it may, the Mumbai bombing was a major incident that attracted national attention in India. In the absence of a true analysis of the claimant's subjective fear of persecution, the Board's finding that the applicant has an IFA in Bangalore is arbitrary and capricious.

[Emphasis added.]

[29] Justice Martineau set aside the decision and referred the matter back to the RPD, directing that the new panel would need to “analyze the applicant's subjective fear including an assessment of the credibility and plausibility of his account, before proceeding with an analysis

of the question of persecution, the issue of an IFA and the availability of state protection, as the case may be”: *Amit*, at para 8 and in the formal Judgment, para 2.

[30] In this case, the RAD did not make a reviewable error in its assessment of the applicant’s evidence of subjective fear. Unlike in *Amit*, the RAD was aware of the applicant’s fears and how they arose. The RAD’s reasons and analysis displayed its understanding of the applicant’s fears throughout. It also referred to the fears of his family members.

[31] First, the RAD set out 15 detailed paragraphs of the RPD’s reasons to describe the factual background leading to the applicant’s claim for refugee protection. In those paragraphs, the RPD stated that Mr Singh’s father and relatives “decided that his life was in danger in India due to the above incidents and that it would be best if he left the country.” His father “did not want to worry about his son’s safety,” and felt that he could continue with his political activities if his son was safe in Canada. In the quoted passage, the RPD also noted that the police are still looking for the applicant, and referred to Mr Singh’s mother’s fear for her safety, the fact that his father was still missing, and the fact that police have continued to harass his family and relatives since he left Canada.

[32] In addition, in its own reasoning, the RAD referred to Mr Singh’s testimony that he would not be safe anywhere in India, “both as a SADA supporter and because he was falsely labelled a militant/terrorist like his father.” The RAD also noted Mr Singh’s concern that he would be arrested on arrival back in India (Reasons, para 6; see also para 28). The RAD noted, at paragraph 7, Mr Singh’s testimony that the IFA cities all have a mandatory tenant registration process, meaning that if he ever sought to get housing there, the police would be notified of his whereabouts. He claimed the police were looking for him as a militant and would pass on his

location to his political enemies, whose parties are powerful and influential, who would then come and kill him. He claimed that to get this information and assistance from the police, who are corrupt, his enemies need simply to bribe them. The RAD later referred to Mr Singh's fear of the police because they were in the hands of the party or parties in political power and would do whatever the government told them to do (Reasons, para 30).

[33] The RAD further noted Mr Singh's claim that SADA's political opponents targeted and threatened to kill him, his father's only son, in order to pressure his father to stop his political activism (Reasons, paras 14 and 24-25). At paragraph 27, the RAD found it was clear that deterring his father's political work was the assailants' goal. It also found the RPD's conclusion was well justified that this motive was eliminated by the silencing and disappearance of his father in 2016.

[34] As is apparent, the RAD was well aware of the basis for Mr Singh's claim of persecution and his fears of what would happen if he returns to India. Those fears came from Mr Singh's own testimony. The RAD considered and analyzed those fears in its IFA analysis. Accordingly, the RAD did not make a reviewable error by failing to assess Mr Singh's subjective fears. The RAD's reasons provide transparent and justified reasons for its conclusions that meet the requirement in *Amit*.

[35] The applicant's third argument, made in his written submissions, appeared to suggest that the RAD preferred documentary evidence to the applicant's testimony and should not have done so. This argument was not fully articulated in the applicant's materials or at the hearing, including identifying which documents the RAD preferred over what testimony.

[36] In response, the respondent submitted that this Court has held that a decision maker is entitled to prefer documentary evidence to testimony, even testimony that the decision maker finds credible (citing *Doka v Canada (MCI)*, 2004 FC 449 (Russell J.), at paras 37-38).

[37] I do not believe a reviewing court should attempt itself to identify the specifics of possible documents and testimony in the RAD's reasons or in the record to support the applicant's position. To do so could put the reviewing court in the role akin to a party or advocate and could result in consequential unfairness to the other party (who may not have had a proper opportunity to respond). I find that I am unable to assess meaningfully the merits of the applicant's position on this issue. No arguable reviewable error has been identified.

[38] The applicant's final submission about the RAD's analysis of the first *Rasaratnam* prong concerned the conclusions about the population and geography of India. However, while the RPD expressly assessed and relied upon these factors, I cannot find any mention of them in the RAD's analysis. What discussion there is about population and geography occurred only in the RAD's recitation of the RPD's main findings (Reasons, at paras 11-12). As a result, the applicant has not demonstrated that the RAD made a reviewable error in this respect.

B. *The second prong in Rasaratnam*

[39] The Federal Court of Appeal in *Ranganathan v Canada (MCI)*, [2001] 2 FC 164 (CA), held that the second prong of the IFA analysis requires "actual and concrete" evidence of "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling to or temporarily relocating in a safe area" (at para 15).

[40] In this case, on prong two, the RAD considered Mr Singh's submission that he does not speak the most widespread languages in each of the IFA cities. He maintained that as a Punjabi Sikh migrant in those cities, he would attract the attention of the police, which would then question him about his motives for moving there. The RAD found that the documentary evidence about India stated that since the late 1980s and early 1990s, Sikhs have lived peacefully in India and most Sikhs do not experience societal discrimination or violence. The RAD also noted that every major city in India has a strong Sikh community and that Sikh minorities living outside Punjab have access to housing, education, health care, education and freedom to practice their religion. The RAD found no evidentiary foundation for the submission that Mr Singh would be harassed or oppressed in any way in any of the IFAs, or have language difficulties there.

[41] Mr Singh's position on this application was that the RAD failed to give appropriate consideration and weight to the evidence that the Indian police would eventually know Mr Singh's presence in one of the IFA cities. I do not agree.

[42] The applicant's submissions did not demonstrate that the RAD fundamentally misapprehended the evidence about whether his presence in the IFA cities would come to the attention of the police. Instead, as the respondent submitted, the applicant essentially asked the Court to reassess or reweigh the evidence, something that the Court cannot do: *Vavilov*, at para 125. The applicant did not point to any specific evidence that the RAD ignored or allegedly failed to give appropriate consideration and weight.

[43] The record does not disclose whether the applicant made arguments to the RAD based on this Court's decisions in *Abbas* and *Ng'aya*. In each of those cases, the unreasonableness of the IFAs arose from the serious risks to the applicants in each case that their location would become

known to the family members who were agents of persecution, and therefore the applicant would have had to isolate entirely from their respective families in order to be safe in the proposed IFA: see *Ng'aya* at paras 3-6 and 12-14; *Abbas*, at paras 1, 7-8 and 26-30. Comparable circumstances do not arise here. In this case, the RAD considered the interest and motivation, and means and capacity, of the police to track down the applicant when it assessed the IFA. The RAD found that the police had the means to locate the applicant, but would not be motivated to find him because his father was no longer involved in political activism and because the political parties that might instruct the police to keep searching for the applicant were no longer in government. The RAD also found that SADB did not have a network independent of the police that would enable it to learn that Ms Singh had settled in any of the IFA cities. Further, the RAD found that Mr Singh would be able to safely reach the IFA cities because there was no serious possibility, based on his profile and evidence from country condition documents, that he would be arrested at the airport on arrival in India.

[44] Accordingly, the applicant has not shown that the RAD's decision on the second *Rasaratnam* prong was unreasonable on the standard of review described in *Vavilov*.

IV. Conclusion

[45] For these reasons, I conclude that the applicant has not demonstrated that the RAD's decision is unreasonable. The application must therefore be dismissed.

[46] In closing, I note that the applicant raised a new issue during oral submissions at the hearing related to which party, the SADA or the SADB, currently holds power in Punjab. The respondent's counsel properly observed that the issue was not mentioned in the applicant's

written materials, but nonetheless made spontaneous submissions to respond, including that the new argument was not supported with any specific references to the evidence. In these reasons, I did not assess the new issue in substance, because of the lack of evidentiary references and as a matter of fairness to the respondent.

[47] Neither party proposed a question for certification and none is stated.

JUDGMENT in IMM-4071-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4071-20

STYLE OF CAUSE: MANPREETH SINGH v THE MINISTER OF
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PLACE OF HEARING: TORONTO, ONTARIO

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AND JUDGMENT:** A.D. LITTLE J.

DATED: NOVEMBER 1, 2021

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