

Federal Court



Cour fédérale

Date: 20221107

Docket: IMM-8223-21

Citation: 2022 FC 1511

Ottawa, Ontario, November 7, 2022

PRESENT: Madam Justice Walker

BETWEEN:

**PARAMJIT SINGH UNKNOWN
SUKHMANPREET SINGH UNKNOWN
JASWINDER KAUR UNKNOWN**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (RAD) dated October 20, 2021 confirming the refusal of their refugee claim by the Refugee Protection Division (RPD). The RPD and the RAD concluded that the Applicants have viable internal flight alternatives (IFAs) in Delhi and Mumbai and, accordingly, are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow, this application for judicial review is dismissed. The RAD assessed the Applicants' evidence and submissions against the accepted test for a viable IFA. The RAD also justified its conclusions regarding the motivation and means of the Applicants' agents of persecution to pursue them in the IFAs with detailed reasons that respond to the review framework established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*).

I. **Background**

[3] The Applicants are citizens of India. Prior to coming to Canada, Paramjit Singh (the Principal Applicant) owned and ran a garment factory in Jalandhar (Punjab), India. In 2018, he borrowed money from a loan financier, BS, but later the same year suffered a catastrophic fire at the factory. As a result, when BS demanded repayment of the loan, the Principal Applicant was unable to make the required payment. On September 20, 2018, BS and his henchmen went to the Applicants' home, beat the Principal Applicant and destroyed property.

[4] On October 15, 2018, the local Punjab police detained the Principal Applicant based on allegations of theft by one of his business competitors, HS. The police also accused the Principal Applicant of being involved with militants and detained him for three days. On November 5, 2018, the Principal Applicant went into hiding in New Delhi where his family joined him on November 12, 2018.

[5] With the assistance of an agent, the Principal Applicant, his spouse and one of their sons obtained Canadian visas and left India on October 29, 2019. One of the couple's sons remained

in India. The Applicants claimed refugee protection on November 8, 2019, stating that, should they be forced to return to India, they fear persecution by the police in Punjab, the competitor HS, and unpaid loan financier BS.

[6] Following a hearing on May 3, 2021, the RPD rejected the Applicants' refugee claims on the basis that there are two IFAs available to them within India. The Applicants appealed the RPD's decision to the RAD.

II. Decision under Review

[7] On appeal to the RAD, the Applicants challenged the RPD's findings on both prongs of the established test for a viable IFA set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*). Following an analysis of the Applicants' appeal arguments, the RAD agreed with the RPD that the Applicants had not established that their agents of persecution are motivated or able to locate them in Delhi or Mumbai, or that it would be unreasonable in the circumstances for them to seek refuge in the IFAs.

[8] In this application for judicial review, the Applicants focussed their arguments on the RAD's analysis of the first prong of the IFA test. The panel's determinative findings in this regard were:

1. Neither the police nor HS have a continuing motivation to locate the Applicants as the Principal Applicant will no longer compete with HS if he relocates to either of the IFAs. The police would therefore have no interest in the Applicants because their alleged pursuit stemmed from HS and his competitive jealousy.
2. There was no evidence before the RPD or the RAD that the police have approached the Principal Applicant's son who continues to reside in Punjab, only

60 kilometres from Jalandhar. The lack of police pursuit of the son undermines the Applicants' contention that the police remain motivated to seek them throughout India.

3. There are credibility concerns with the Applicants' allegation of police visits to their local Councillor. These visits were not mentioned in their Basis of Claim (BOC) narrative or in any amendment to the BOC. The Principal Applicant's explanation that it is normal for the police to "go around in order to look for someone" is not a reasonable explanation for the omission. There are also credibility concerns with the Applicants' allegation that the police searched for the Principal Applicant at his brother-in-law's home in Delhi.
4. The Applicants have not established that the Punjab police have the means to locate them in Delhi or Mumbai. First, there is no documentary evidence of official police interest in the Principal Applicant, such as actual charges against him, an arrest warrant, a First Information Report (FIR), or other evidence suggesting the Principal Applicant may have been entered in a crime and criminal tracking network or database. Second, there is information in the National Documentation Package (NDP) for India that police stations across India are not well connected, nor is there a system of effective data storage and sharing. Police in India are able to track persons of interest when they put their minds to it but the effort to track an individual is typically made only in cases involving heinous crimes (e.g., rape, murder).
5. The RAD acknowledged that problems with the police can arise in the absence of a formal arrest warrant or accusation and that the police in the IFAs could alert the Punjab police to the Applicants' whereabouts. However, the Applicants' assertion to this effect did not discharge their onus of establishing they would not be safe in the IFAs. The RAD discounted the Applicants' reliance on the ability of the police to find them through the tenant verification system.
6. Turning to BS, the Principal Applicant knew little about this individual except that he is a financier. The Applicants provided no evidence that BS had sought them since 2018 or of how he could locate them in the IFAs. The Applicants' allegation that BS is wealthy or may possibly have business outside of Punjab was not sufficient to establish he has the means to locate the Applicants in an IFA.

III. Analysis

[9] The RAD's reasons and conclusions regarding the availability of IFAs in India for the Applicants are subject to review for reasonableness (*Vavilov* at paras 10, 23; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32). Where the Court reviews an

administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and determine whether the decision “is based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

[10] The concept of an IFA is integral to the definition of a Convention refugee. A claimant must be a refugee from a country, not from a particular region of a country. The IFA test has two prongs: is there a serious possibility of persecution or a section 97 risk in the proposed IFA, and is it reasonable for the claimant(s) to relocate there? (*Rasaratnam* at para 13). Once the issue of an IFA has been raised, the claimant bears the onus of establishing that they do not have a viable IFA (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, at p 594-595 (CA)).

[11] The Applicants submit that the RAD’s analysis of both the motivation and means of the police in India to locate them in the IFAs is unreasonable and reflects a selective reading of the documentary evidence in the NDP.

[12] In the course of their submissions regarding the ongoing motivation of the police, the Applicants acknowledge that the underlying cause for police interest in them no longer exists. However, the Applicants argue that the police in Punjab continue to look for them in their old neighbourhood and that the RAD erred in stating that the police have not attempted to locate them in Delhi. They state that the police did, in fact, visit the Delhi home of the Principal Applicant’s brother-in-law in 2018.

[13] I am not persuaded by the Applicants' argument and find no material error in the RAD's assessment of the continued interest of the Punjab and Delhi police to locate the Principal Applicant.

[14] The RAD referred to the Principal Applicant's testimony at the RPD hearing that the police had gone to his brother-in-law's home in Delhi on November 10, 2018 but stated that there is no reference in his BOC narrative to such police visits. The panel noted that the brother-in-law's affidavit referenced the police visit to the Applicants' home on November 10, 2018 but did not mention police visits to his own home. The RAD then stated:

[14] [...] Therefore, I find there are credibility concerns with the allegation that the police searched for the [Principal Applicant] at the brother-in-law's home in Delhi. Nevertheless, even if I assume the police did attend at the brother-in-law's house on November 10, 2018, the Appellants testified that the police did not return thereafter. I find this further signals a lack of interest by the police in the Appellants and renders it unlikely that they would go to the lengths of seeking them in an IFA, including in Delhi.

[15] In his affidavit, the brother-in-law stated that the Principal Applicant came to his house on November 5, 2018 and informed him that the police had visited the Applicants' home in Jalandhar five days earlier, on November 10, 2018. The brother-in-law also stated, "[t]hat the police came to our house looking for him but he was already gone". Before the RPD, the Principal Applicant confirmed that the police went to his brother-in-law's home in Delhi but that he had already left to stay elsewhere. The Principal Applicant also testified that the police visit in Delhi was on November 10, 2018 and that the police did not subsequently return to the brother-in-law's home.

[16] I agree with the Applicants that the RAD erred in stating that the brother-in-law omitted from his affidavit any mention of a police visit to his own home. However, I find that the error is not a significant error and does not undermine the RAD's substantive conclusion that the police have demonstrated no interest in pursuing the Applicants since November 2018.

[17] The Principal Applicant left the brother-in-law's home shortly after his wife and two sons arrived in Delhi on November 12, 2018. In his BOC, the Principal Applicant states that he met with the agent who assisted the family in obtaining visas on November 12 and that the agent kept the family in hiding following the meeting until their departure from India. Although it is not possible to determine the exact date of the police visit to the brother-in-law's home in Delhi, the Principal Applicant's testimony, the chronology of events in November 2018 and the brother-in-law's affidavit support the conclusion that the visit occurred shortly after November 12, 2018.

[18] The Applicants do not contest the fact that police interest in the Principal Applicant was spurred by HS and that his competitive jealousy would no longer exist upon their relocation. They do not contest the RAD's conclusions regarding omissions from the Principal Applicant's BOC relating to police visits to the municipal councillor in Punjab, their adult son who lives close to their hometown or their neighbours in Punjab. Despite its statement that the evidence did not support the fact of a police visit in Delhi, the RAD was prepared to assume that a visit occurred on November 10, 2018. Whether the visit occurred on November 10, 2018 or a few days later once the Principal Applicant had left his brother-in-law's home, the evidence in the record supports the panel's conclusion that the three-year interval since the Delhi police displayed any interest in the Principal Applicant undermines the allegation of continuing police

motivation. The RAD's factual error regarding the brother-in-law's affidavit does not affect this conclusion, nor does the Principal Applicant's general reference in his affidavit (omitted from his BOC) to police visits to his neighbours in Punjab.

[19] Turning to the RAD's analysis of the means of the police in India to locate them in the IFAs, the Applicants submit that the panel's reasoning reflects a selective reading of the NDP. They argue that the RAD unreasonably relied on excerpts from the NDP that speak to the lack of organization among police forces in India and over-emphasized the absence of a warrant or FIR against the Principal Applicant. They state that the RAD failed to recognize the fact that the Principal Applicant was arrested, his fingerprints taken and reporting conditions imposed on him by the police in Punjab.

[20] I do not agree with the Applicants' submissions for two reasons. First, the RAD's analysis of the ability of the police to track the Principal Applicant in the absence of a warrant or FIR is nuanced. The RAD acknowledges the possibility that police forces may act in the absence of formal documentation but notes that action is typically taken only in the face of heinous crimes or crimes of significant notoriety. I am not persuaded by the Applicants' statement that the accusations against the Principal Applicant prompted by a jealous competitor fall within those parameters. I find no error in the RAD's statement that the absence of any official police interest in the Principal Applicant in the form of a warrant or FIR make it unlikely that he would be entered into a nationally accessible criminal database.

[21] I also agree with the RAD that the Applicants' insistence on the possibility of problems with the police occurring extra-judicially is speculative and does not discharge their onus of establishing they would not be safe in the IFAs.

[22] Second and more generally, I am not persuaded that the RAD failed to address critical and contradictory documentation in the NDP (*Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, [1998] FCJ No 1425). The Applicants include in their written submissions information from the NDP stating that not all police stations in all states in India are disorganized or slow to respond and that the police can use the CCTNS, the pan-India database on crime and criminals, and the tenant verification system to access the criminal record and history of a person from any police station in the country.

[23] The excerpts cited by the Applicants provide information regarding the organization and ability of certain police forces to take action but does not contradict the RAD's assessment of the NDP or the specific facts and circumstances of the Applicants' claims. The recent documentary evidence establishes significant shortcomings in the various pan-India registration systems and the RAD's analysis of the operational status of the criminal and tenant registration systems in India is thorough. The RAD's decision includes reference to the inadequate state of the latter system in Delhi and Mumbai, and to the lack of resources of many police forces to carry out verifications. The Applicants refer to a statement from the *Times of India* newspaper in 2018 that the CCTNS was being used and that the vast majority of police stations in India were integrated into the system. However, that statement and the passages from the NDP included in the

Applicants' written submissions set out the intended scope and operation of those systems but do not address the clear gaps in implementation and actual usage.

[24] I find that the Applicants' reliance on portions of the NDP to assert the possibility the Principal Applicant would be tracked to either of the IFAs, without evidence of why the police would do so, does not establish a reviewable error in the RAD's analysis of the means of the police to locate them in the IFAs. There is no evidence in the record that the Principal Applicant's name has been included in the CCTNS and, as the RAD stated, the allegations against the Principal Applicant are such that it is unlikely the police forces would devote scarce resources to locating him in the IFAs.

IV. **Conclusion**

[25] In summary, the RAD's finding of viable IFAs for the Applicants in India is reasonable in light of the evidence and applicable law, and its analysis is clear and comprehensive. As a result, the application is dismissed.

[26] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-8223-21

THIS COURT'S JUDGMENT is that:

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

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8223-21

STYLE OF CAUSE: PARAMJIT SINGH UNKNOWN SUKHMANPREET
SINGH UNKNOWN JASWINDER KAUR UNKNOWN
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 31, 2022

JUDGMENT AND REASONS:: WALKER J.

DATED: NOVEMBER 7, 2022

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