

Federal Court



Cour fédérale

**Date: 20230516**

**Docket: IMM-8890-22**

**Citation: 2023 FC 687**

**Ottawa, Ontario, May 16, 2023**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**GURPREET SINGH GILL**

**Applicant**

**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] dated January 12, 2022 confirming the Refugee Protection Division's [RPD] determination that the Applicant is neither a Convention refugee or a person in need of protection pursuant to section 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, the application is dismissed.

## II. **Facts**

### A. *Background Facts*

[3] The Applicant is a 42-year-old citizen of India. He was born in a small village in Punjab. The Applicant has only a few years of formal schooling and refers to himself as “mentally slow”. When in India, he worked on his family’s farm. He is unmarried with no children. His father is deceased, his only brother immigrated to Canada in September 2015 and his mother first came to Canada on a visitor visa in 2017.

[4] The Applicant alleges that his paternal uncles are “very rich” and have “deep rooted connections with police and politicians”. They harassed him in order to take possession of his father’s land, and physically assaulted him multiple times. The Applicant claims the last time they beat him was in January 2018. The Applicant went to the police on multiple occasions to file reports against his uncles, only for the police to not take any action.

[5] The uncles took possession of his land in December 2017. The Applicant sought assistance from the police, but they did not help him, he claims, because of his uncles’ connections. The Applicant alleges his uncles threatened to kill him if he tried to reclaim the land.

[6] When he was at the police station, an officer threatened to implicate him in a false case if he did not stop complaining about his uncles. The Applicant believes he cannot live safely in any part of India as he believes the police will be able to find him anywhere if his uncles demand it.

[7] The Applicant arrived in Canada on April 6, 2018 on a temporary resident visa issued in November 2017. In May 2019, he sought refugee protection in Canada.

*B. RPD Decision*

[8] In a decision dated January 12, 2022, the RPD found that the Applicant was not a Convention refugee nor a person in need of protection.

[9] During the RPD hearing, the Applicant's counsel asked that he be provided with a Designated Representative in accordance with section 167(2) of *IRPA* as he was having difficulty answering simple questions. The Applicant did not provide any formal psychological assessment, diagnosis or expert evidence before the panel indicating the nature and extent of his mental incapacities. The panel noted that the Applicant appeared to understand the nature of the proceedings and was satisfied that he demonstrated an understanding of the concepts of a Convention Refugee and a person in need of protection. The panel found that the Applicant had a difficult time answering some questions but did answer them when prompted, and that his counsel was quite active in ensuring the Applicant's comprehension. Thus, the panel did not find that the Applicant met the threshold for the appointment of a designated representative.

[10] The panel found the Applicant to be credible and truthful. However, the panel noted that the Applicant was often unable to answer basic questions with respect to his claim, his testimony was difficult to understand, and the Applicant often reiterated that his uncles had beaten him and that he was mentally slow. For this reason, the panel asked to hear from the Applicant's brother to corroborate the allegations. Based on both testimonies, the panel accepted that the Applicant has been in conflict with his paternal uncles over a land dispute and that they have been physically abusive towards him. The panel found that the uncles now control the land and that while there may be some risk to the Applicant if he were to return to his home in the Punjab, the panel was not persuaded that the Applicant does not have an internal flight alternative [IFA] in India.

[11] The panel assessed the claim under section 97(1) of *IRPA* and found that there is no nexus between the Applicant's allegations and any of the refugee Convention grounds. While the panel noted that an Applicant may be considered a member of a particular social group due to mental illness, it concluded that it was not clear whether the Applicant's alleged mental issues were due to psychological issues or intellectual capacities as it did not have any objective evidence before it indicating the nature or extent of those issues. Thus, the panel was unable to find that the Applicant has a condition that would subject him to persecutory harm.

[12] The panel determined that the determinative issue is the existence of an IFA in Mumbai or Delhi and applied the two-prong test set out in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.).

[13] For the first prong of the test, the panel considered whether the evidence indicates that the agents of harm have the motivation to pursue the Applicant in either of these cities, and whether there is any new risk to him there. The panel found that there is insufficient evidence that the Applicant's uncles have a continuing interest in pursuing him considering that the property in dispute is currently under their control. In the absence of further details, the testimonies of the Applicant and his brother did not adequately establish that their uncles would be motivated to harm the Applicant in another location. The Applicant also expressed fear of persecution at the hands of the police and believes they will be able to find him anywhere in India if his uncles demanded it. As the panel had already found that his uncles lack motivation to pursue him, it concluded they would not have any reason to direct the police to do so. Thus, the panel found that the Applicant has not adduced sufficient evidence to demonstrate that either his uncles or the police are sufficiently motivated to locate and harm him in the IFAs.

[14] The panel also considered whether the Applicant's self-described mental health or intellectual capacity issues could expose him to persecution or a risk under section 97 in the IFAs. Given the objective country evidence indicating that there are mental health services available in India and in the absence of evidence about any particular condition from which the Applicant may suffer, the panel was unable to conclude that there exists a serious possibility that he be persecuted on this basis in either of the proposed IFAs.

[15] On the second prong of the test, the panel found on a balance of probabilities that the Applicant's life or safety would not be jeopardized by traveling to or living in either of the proposed IFAs and that it would not be unreasonable to expect the Applicant to relocate to either

of these cities. The Applicant testified that he would have difficulties finding employment and that it would be very difficult for him to establish himself in either city without support. The panel acknowledged that internal relocation would be difficult for the Applicant but noted that he had lived independently for a while after 2017. The panel was unable to conclude that the Applicant would be precluded from performing similar work as he did in Canada and the Punjab. Considering the Applicant identifies as a Hindu Sikh, the panel noted evidence in the National Documentation Package indicates that Sikhs live peacefully in India and the majority do not experience societal discrimination or violence. Finally, the panel found there was insufficient evidence that the Applicant suffers from a psychological condition that would jeopardize his life and safety in the IFAs.

*C. Decision under review*

[16] In a decision dated August 12, 2022, the RAD dismissed the Applicant's appeal.

[17] On appeal, the Applicant argued that he would face undue hardship in Mumbai or Delhi because of his mental health and intellectual capacities issues and that people with such issues face discrimination, a lack of treatment and serious challenges finding jobs and housing, thus making it unreasonable for the Applicant to move to either of the proposed IFAs. The RAD considered a new issue on appeal and invited the Applicant to make submissions on what forward-facing risk of harm the Applicant would face if he were to return to his village in Punjab without attempting to get his property back. The Applicant responded that his primary risk is not over the land but the lack of treatment, discrimination and stigma he would face due to his condition without any family support.

[18] The RAD made two main findings: 1) the Applicant would not face a serious possibility of persecution due to the land dispute if he were to return to his hometown, and 2) the Applicant had not established that he has significant mental health or intellectual capacity issues.

[19] On the first finding, the RAD disagreed with the Applicant and his brother's testimony that the Applicant is still in danger. The RAD found that since the entire reason of the dispute was due to the Applicant resisting the fact that his uncles took his land, if he returns to India, there does not appear to be any reason for his uncles to pursue him if he does not try to get his land back.

[20] The RAD reasoned that refugee claimants are expected to make reasonable choices to free themselves of a risk of harm as long as these choices would not deprive them of their general ability to earn a living, including giving up family inheritance or land if they are not dependent on it for a basic income and if action would free them from any future risk of harm: *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99; *Malik v Canada (Citizenship and Immigration)*, 2019 FC 955 [*Malik*]; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 595 [*Singh*]. The RAD found that this is such a case in which the Applicant would be expected to relinquish his land to be free of any future risks of harm. The RAD did not find that the Applicant had established that if he returns today, he would still be pursued by his uncles even if he does not try to get his land back.

[21] On the second finding, the RAD agrees with the RPD that there is insufficient evidence to establish that the Applicant has significant mental health or intellectual capacity issues. The

RAD noted that the Applicant did not directly address the sufficiency of evidence on this question, but rather focused on the persecution faced by this population in India and has not provided any formal diagnosis or psychological evidence to support this allegation. The RAD also noted that while the Applicant did have some trouble answering certain questions, he was often able to answer them when they were repeated, was testifying using an interpreter and only had eight years of formal schooling. Thus, the RAD concluded that his difficulty answering questions could be due to many different factors and that, without further evidence, the testimony at the hearing was an insufficient basis to conclude that the Applicant has significant mental health or intellectual capacity issues. The RAD also noted that although the Applicant's brother testified that he has trouble taking care of himself or working alone, the Applicant has worked previously on a farm and as a painter, and had also lived on his own for some time in 2017 when members of his family moved to Canada.

[22] The RAD acknowledged the barriers in treatment in India as well as the stigma and discrimination faced by people with disabilities. However, the RAD found it unclear whether the Applicant requires any on-going treatment, as he has not provided any evidence to this effect. It was also not clear what disability the Applicant is living with, which makes it hard to assess what his situation would be like in India. The Applicant had provided no evidence about the details of any formal disability or intellectual capacity issue, what treatment he requires and how it impacts his life other than making finding employment more challenging. The RAD concluded that while returning to India might be challenging, the Applicant had not established that the treatment or discrimination he might face amounts to persecution.



[23] Since the RAD found that the Applicant would not face a serious possibility of persecution due to the land dispute or due to his mental health or disability upon return to India and that the Applicant can return safely to his hometown, the RAD concluded that the Applicant is not a Convention refugee nor a person in need of protection.

### III. **Issues and standard of review**

[24] The sole issue raised in this matter is whether the RAD's decision finding that the Applicant is not a Convention refugee nor a person in need of protection was reasonable.

[25] The parties and I agree that the standard of review applicable to the RAD decision is reasonableness.

### IV. **Analysis**

#### *A. Applicant's submissions*

[26] The Applicant submits that the RAD erred in law and based its decision upon an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it.

[27] The Applicant submits that even if documentation regarding his psychological and intellectual state was not provided, there was evidence in the form of sworn testimony on this issue and this testimony was accepted as credible by the RPD. As a result, the Applicant submits

that the RAD erred by being completely dismissive of the Applicant's issues and rejecting them in their entirety.

[28] The Applicant also submitted to the RAD that he does not have any remaining family members in India who could offer him any support and would be left to fend for himself, and that the stigma and discrimination associated with persons who suffer from mental issues is worse in rural areas. It is argued that the RAD did not acknowledge this factor in their decision and committed a reviewable error.

*B. Respondent's submissions*

[29] The Respondent argues the RAD's analyses on the Applicant's ability to return to India safely and the lack of evidence concerning his intellectual capacity issues are intelligible, transparent and defensible in law. The Respondent argues the Applicant has failed to demonstrate a reviewable error and simply disagrees with the RAD's finding on the lack of forward-looking risk and the Applicant's intellectual capacity.

[30] The Respondent submits that the RAD's role is to correct the RPD's errors and is constrained by the record before it. A RAD decision is not unreasonable merely because it did not canvas each issue canvassed by the RPD, it is deemed to have taken notice of the entirety of the RPD's decision: *Cruz v Canada (Citizenship and Immigration)*, 2020 FC 22 at para 32. The RAD carefully considered all aspects of the RPD decision and carried out its own analysis of the record: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103.

[31] It is submitted that it is clear that the RAD conducted an independent assessment of the evidence because it arrived at different reasons for dismissing the appeal and concluded that the Applicant could return to his home village. Two recent cases cited by the RAD examined similar issues, *Malik* at para 25, and *Singh* at para 16, where the Court dismissed the judicial review applications as the risk would be resolved by forgoing his inheritance, in *Malik*, and by selling the land in dispute, in *Singh*. The RAD was reasonable in concluding that there is no forward-looking risk and that the Applicant would have no issues returning to his village as his uncles already have possession of the land.

[32] Moreover, the Respondent points to how the Applicant's submissions on appeal were not concerned with the land, but with the argument that his primary risk is the persecution he faced due to his mental health and intellectual capacity.

[33] In response to the Applicant's assertion that the RAD did not give appropriate weight to his brother's testimony, the Respondent submits that the difficulty is that he presented no objective evidence whatsoever of a mental health or intellectual disorder. The Applicant had the burden to prove his claim that he has significant mental health or intellectual incapacities to the extent that he would face stigma or discrimination on his return to India. He failed to provide objective evidence even though he was represented by counsel at the RPD hearing and was provided with an opportunity to provide submissions to the RAD on this question.

*C. Analysis*

[34] I have sympathy with the Applicant's situation but I am unable to conclude that the RAD erred and that this matter should be returned to the RAD for reconsideration by another member.

[35] While the RPD accepted that the testimonies of the Applicant and his brother were truthful and credible, the RAD was not obliged to consider that evidence to be sufficient to establish that the Applicant suffers from mental health issues or a disability. The RAD did not dismiss the evidence as the Applicant contends. Rather, on a plain reading of the RAD's decision, it is clear that the RAD took into account that the Applicant had exhibited some issues in his RPD testimony and also considered the brother's comments with regard to the Applicant's abilities.

[36] The focus of the appeal to the RAD was on the mental health and intellectual capacity issues. It was argued by the Appellant that:

The Appellant submits the primary risk of persecution he faces in India is not due to his land, but his mental health and intellectual capacity issues. As outlined in his original appeal submissions, the Appellant submits that access to mental health services is severely limited and that the way persons with mental health disabilities are mistreated in India amounts to persecution. [...]

The Appellant would be left to fend for himself with his mental health issues in a rural setting without the professional/medical assistance he requires. The Appellant would be a prime target for mistreatment and persecution considering his mental and intellectual deficiencies.

[37] Given the lack of supporting evidence, it was reasonable for the RAD to determine there was insufficient evidence that the Applicant would experience persecution as a result of any mental health or intellectual issues he may have. The Applicant alleges that the lack of access to resources and services would prejudice him in India, but has not provided any evidence that he requires specific treatment, is currently undergoing such treatment, or is benefiting from any specific medical assistance or services here in Canada. The Applicant provided no formal diagnosis or psychological assessment by a medical professional.

[38] The Applicant had the burden of providing sufficient and credible evidence of his incapacity or mental health issues and how that would result in persecution in India which he failed to meet. Asserting that he is “slow” is insufficient to meet that burden.

[39] As stated by the RAD at para 20 and 22 of the reasons under review, “it is unclear if the Appellant requires any on-going treatment. He has not provided any evidence that this is the case. It is also not clear what disability the Appellant is living with, which makes it hard to assess what his situation would be like upon return to India. [...] The Appellant has provided no evidence about the details of any formal disability or intellectual capacity issue, what treatment he requires and how it impacts his life other than making finding employment more challenging.”

V. **Conclusion**

[40] On the record before the Court, I am unable to conclude that the RAD's decision was unreasonable. In the result, this application must be dismissed. No serious questions of general importance were proposed for certification.

[41] I can't leave this matter without observing that there may be other avenues to be considered before the Applicant is required to return to India. While the case for refugee protection has fallen short of the standard required, the Act provides the Minister with discretion to exercise in deserving cases. Whether this may be one is not for the Court to determine.

**JUDGMENT IN IMM-8890-22**

**THIS COURT'S JUDGMENT is that** the application is dismissed. No questions are certified.

"Richard G. Mosley"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8890-22

**STYLE OF CAUSE:** GURPREET SINGH GILL V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** APRIL 20, 2023

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