

Federal Court



Cour fédérale

**Date: 20230804**

**Docket: IMM-11278-22**

**Citation: 2023 FC 1081**

**Vancouver, British Columbia, August 4, 2023**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**JAGTAR SINGH, KAMALJEET KAUR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
& IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants, Jagtar Singh and Kamaljeet Kaur, seek judicial review of an October 14, 2022 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD dismissed the applicants' appeal and confirmed the Refugee Protection Division's (RPD) determination that they are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [IRPA] because the applicants have viable internal flight alternatives (IFAs) within India.

[2] The applicants fear persecution in India due to their political opinion in opposition to the Indian National Congress Party (Congress Party), and their involvement with the rival political party Shiromani Akali Dal (Badal) (SAD(B)). Mr. Singh was an active member of the SAD(B) party and spoke against the Congress Party and its policies. He also criticized a local Congress Party candidate who is wealthy and influential. The applicants state the local Punjab police are corrupt and do not protect poor and unconnected people. The police did not protect Mr. Singh after he was beaten for speaking out against the local Congress Party in 2017. In 2019, after Mr. Singh criticized the Congress Party leader at a village gathering, five party members beat Mr. Singh and threatened to kill the applicants. When Mr. Singh attempted to register a police complaint against his assailants, he was illegally detained at the behest of the Congress Party leader. Mr. Singh states he was released two days later, after a relative bribed the police, but the officers threatened to put him in jail if they saw him again. The applicants fled India. They allege they will be harmed by members of the Congress Party or the Punjab police if they return.

[3] The RPD did not accept the applicants' argument that the agents of persecution would locate and harm them in the proposed IFA cities. The RPD was not satisfied the local Punjab police or local Congress Party members would have the means to locate the applicants, for example through a tenant verification system. The RPD further found the evidence insufficient to establish that the agents of persecution would have the motivation to locate the applicants in the proposed IFAs. Mr. Singh's testimony at the RPD hearing regarding his ongoing risk was

found to be vague and lacking detail, and did not establish a motivation to search for the applicants in the proposed IFAs.

[4] The RAD noted that the applicants' challenge on appeal related to the RPD's finding that the local Punjab police would not have the means or motivation to locate the applicants—they did not challenge the RPD's finding that local Congress Party members would not be motivated to find or harm them in the proposed IFAs. The RAD stated that the applicants argued the evidence they had submitted in support of their claim along with their sworn testimony established the motivation and the interest of the local police force in locating Mr. Singh and apprehending him.

[5] On this application for judicial review, the applicants submit the RAD misstated their argument. They submit the RAD found that the Punjab police would not be motivated to locate them outside Punjab, when this was not the argument they had put forward. Instead, the applicants had argued that the police in the IFA cities will send the applicants' information to the Punjab police in their home village as part of the tenant verification system that is mandatory in most Indian cities, including the proposed IFA locations. As a result, there is a serious possibility the local Punjab police will be notified that the applicants are in one of the IFA cities. The applicants had argued that upon learning the applicants' whereabouts, corrupt police officers—who already detained Mr. Singh illegally at the behest of the Congress Party—will inform party members. The applicants submit the RAD failed to comprehend this argument or assess it in any manner, and this constitutes a reviewable error that renders the decision unreasonable.

[6] In addition, the applicants submit the RAD accepted that Congress Party members continue to harass the applicants' family in order to locate the applicants. The RAD erred by failing to consider that the applicants have maintained contact with their family, and if they relocate to a proposed IFA the family cannot be expected to lie about their whereabouts. The applicants submit the RAD failed to consider that refugee claimants are not required to go into hiding to be safe in an IFA. The applicants argue they cannot be expected to cease communicating with family, nor is the family expected to lie, or jeopardize their own safety, to prevent the agents of persecution from locating the applicants: *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*].

[7] The respondent submits the applicants did not argue before the RAD or the RPD that the agents of harm would locate them through family members, and the applicants improperly raise a new argument for the first time on judicial review. In *Singh v Canada (Minister of Citizenship and Immigration)*, 2023 FC 875 at paragraphs 23-60 [*Singh*], this Court declined to consider a similar argument based on the principle in *Ali*, when the applicant had not raised the argument before the RAD.

[8] With respect to the applicants' argument about the tenant verification system, the respondent submits the RAD was clearly aware of the argument and understood it. The RAD specifically noted the applicants' argument in its decision, but found there was no serious possibility the agents of persecution were motivated to find the applicants in any of the IFA locations. The respondent contends the lack of motivation was the RAD's central and determinative finding. The RAD was prepared to accept the applicants' allegations that the local

Congress Party members were motivated to find and harm the applicants outside their village in Punjab, but the RAD did not accept there was sufficient evidence to establish that local Congress Party members would be motivated to find the applicants outside of Punjab, such as in the proposed IFAs. The respondent submits this finding was open to the RAD based on the record. The applicants' basis of claim (BOC) narrative does not provide any details about encounters with the agents of persecution after the 2019 assault and police detention. As such, the RAD analyzed Mr. Singh's testimony from the RPD hearing on this point, and found his testimony was insufficient to establish that members of the Congress Party were looking for the applicants outside their village or outside Punjab.

[9] The parties agree that the applicable standard of review is reasonableness, and the RAD's decision is reviewed according to the guiding principles set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the reviewing court determines whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

[10] For the reasons below, I find the applicants have not established a reviewable error that renders the RAD decision unreasonable.

[11] I agree with the respondent's position on arguments that were not raised before the RAD. The RAD specifically noted that the applicants did not challenge the RPD's conclusion that local Congress Party members would not be motivated to find and harm them, and only challenged the RPD's conclusion regarding the motivation of the local Punjab police to do so. The applicants' memorandum of argument on appeal to the RAD did not allege that local Congress Party members would find them in an IFA through applicants' family members. In my view, the applicants improperly raise this argument for the first time on judicial review: *Singh* at para 60.

[12] The RAD expressly referred to and accurately summarized the applicants' argument with respect to the tenant verification system, noting the applicants' arguments that police authorities in the IFA cities would verify them as tenants, and in doing so would send an inquiry to the applicants' hometown and inform the Punjab police authorities about the applicants' location. The applicants have not established that the RAD misstated or misunderstood their argument.

[13] Also, the applicants have not established the RAD committed a reviewable error by failing to address the actual arguments they made in their appeal memorandum. The applicants' arguments were addressed by the RAD's determinative finding on motivation. In this regard, the RAD considered the RPD's findings with respect to motivation, including the RPD's finding that Mr. Singh's testimony about the ongoing risk he and his wife would face from local Congress Party members and the efforts made to find the applicants outside their village were generally vague and lacking detail, and there was insufficient evidence to establish the agents of harm would be motivated to expend energy and resources to find and harm the applicants in the IFA cities. The RAD found no error with the RPD's conclusions. The RAD analyzed Mr. Singh's

testimony, and did not accept there was sufficient evidence to establish that local Congress Party members would be motivated to find the applicants outside of Punjab, such as in the proposed IFAs. The RAD stated it was aware of the applicants' submissions on appeal that the agents of harm would be able to locate them because of the tenant verification system, but did not find that there was a serious possibility that the agents of persecution are motivated to find the applicants in any of the proposed IFAs.

[14] The applicants have not established that the RAD's decision is unreasonable, and this application for judicial review is dismissed.

[15] Neither party proposed a question for certification. In my view there is no question to certify.

**JUDGMENT in IMM-11278-22**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

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Judge



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

**DOCKET:** IMM-11278-22

**STYLE OF CAUSE:** JAGTAR SINGH, KAMALJEET KAUR v  
THE MINISTER OF CITIZENSHIP & IMMIGRATION

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

**DATE OF HEARING:** JULY 27, 2023

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** AUGUST 4, 2023

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