

Federal Court



Cour fédérale

Date: 20230830

Docket: IMM-5476-22

Citation: 2023 FC 1179

Ottawa, Ontario, August 30, 2023

PRESENT: Associate Chief Justice Gagné

BETWEEN:

GURPREET SINGH SIDHU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Gurpreet Singh Sidhu's refugee claim was refused by the Refugee Protection Division [RPD] who found that he had a safe and reasonable Internal Flight Alternative [IFA] in his own country. His appeal to the Refugee Appeal Division [RAD] was dismissed for the same reason on May 16, 2022. He now seeks judicial review of the latter decision on the basis that the RAD erred in its treatment of the evidence and in its analysis of the IFA.

I. Background

[2] The Applicant fears persecution at the hands of his brother and at the hands of state authorities. After the passing of his father, he and his brother fought over a real estate property. Although the issue was settled through mediation and the property was split in two, the Applicant's brother has insisted that he surrender his half and threatened to harm him if he refused.

[3] The Applicant's brother is involved in criminal activities and has political connections. The Applicant's brother made false accusations against the Applicant to local police out of retaliation for the Applicant's refusal to surrender his half of the property. The police later arrested and beat the Applicant on several occasions. The Applicant is unsure whether he was tortured by the police due to the influence of his brother or because the police believed the allegations that the Applicant is linked with antinationalist.

[4] His fingerprints, pictures and other information were taken by the authorities, he was questioned about militant activities and was required to report monthly. He was severely beaten and eventually forced into accepting and admitting to false allegations.

[5] The Applicant left India in December 2017 and states that until this day, police officers and his brother are still looking for him.

II. Decision under review

[6] Before the RAD, the Applicant had filed two affidavits that were not before the RPD, one from his wife and one from his neighbour. The Appellant stated that they were not provided during the RPD proceedings because his wife and his neighbour were worried about what the Appellant's brother may do to them if he found out that they were assisting the Appellant.

[7] The RAD concluded that since these affidavits were reasonably available before the RPD decision, they did not meet the requirements of the law for the admission of new evidence. Further, they do not provide new evidence but rather repeat evidence that was provided during the RPD hearing.

[8] On the merits of the appeal, the RAD reviewed the evidence and found that the RPD decision was correct and that the Applicant had an IFA in Mumbai.

[9] The RAD found that the Applicant's brother does not have the capacity to find him at the proposed IFA and that the motivation to harm him would stop by selling his land.

[10] As for the threat posed by the state authorities, the RAD found that the police did not have any motivation to find him, because the Applicant stated multiple times that they wanted to find him on the instructions of his brother. The RAD did not believe that they wanted to harm him based on his association to antinationalist. It then analysed the capacity of the police to track

the Applicant and concluded the Applicant could not be found through the tenant registration system.

III. Issue and Standard of Review

[11] The Applicant raises the following issues:

- A. *Did the RAD err in rejecting the new evidence?*
- B. *Did the RAD err in its analysis of the capacity and motivation of the agents of persecution to find the Applicant at the proposed IFA?*

[12] There is no dispute that the standard of review applicable to these questions is that of reasonableness (*Canada (MCI) v Vavilov*, 2019 SCC 65 at paras 7, 10, 23 and 25).

IV. Analysis

- A. *Did the RAD err in rejecting the new evidence?*

[13] The Applicant argues that the affiant's fear was not the only reason for not swearing the affidavits sooner; there was also difficulty in providing the documents due to the COVID-19 pandemic. The Applicant states that the mere fact that this was not assessed by the RAD renders the decision unreasonable.

[14] I respectfully disagree. Under the reasonableness standard, reasons do not need to be perfect. They do not have to include all the arguments, statutory provisions, jurisprudence or

other details the Applicant put forward. Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (*Vavilov*, paras 91 and 128).

[15] Although the RPD hearing was held in November 2021, the Applicant’s refugee claim was filed in November 2018, more than one year before the outbreak of the pandemic. Thus, the pandemic might have delayed the hearing of the Applicant’s refugee claim, but it is unlikely that it prevented the filing of documents.

[16] In my view, it was reasonable for the RAD to find that the affidavits from the Applicant’s wife and from his neighbour could have been filed in support of the Applicant’s refugee claim and that as such, they were not new evidence.

B. *Did the RAD err in its analysis of the capacity and motivation of the agents of persecution to find the Applicant at the proposed IFA?*

(1) The Brother’s motivation

[17] It seems quite clear from the evidence that the source of the feud between the two brothers is the real-estate property the Applicant inherited from his parents. Although it was settled in an out of court mediation, the Applicant’s brother used his connections to pressure the Applicant to abandon his share.

[18] There is no evidence that the Applicant would be deprived of the general ability to earn a living or denied a core human right if he renounces his property rights. As a qualified veterinary pharmacist in India, the Applicant's ability to earn a living is not tied to his ownership of the property.

[19] In *Kenguruka v Canada (Citizenship and Immigration)*, 2014 FC 895, the Court concluded:

[7] In light of the record, the panel did not act in an unreasonable manner when it decided that Mr. Kenguruka would not face persecution in Burundi if he abandoned his claim to the property that he inherited from his parents. ... If Mr. Kenguruka were arguing a right set out in the Convention and section 96, such as his right to freely practice his religion, he could not be forced to renounce his religion in order to avoid persecution.

[20] As such, it was reasonable for the RAD to find that there was insufficient evidence that the pressure would continue if the Applicant abandons his rights to the property.

(2) Motivation of the state authorities

[21] The Applicant argues that the RAD erred in finding that there was insufficient evidence of the Applicant's brother's influence on the police. He points to what he sees as a contradiction in the RAD's reasons found when one compares paragraphs 29 and 45 of the decision:

[29] The Appellant argues that his brother will be able to find him in Mumbai because he has powerful political connections, and those connections will help him find the Appellant. However, there is insufficient evidence that the brother has powerful connections that he can make use of, or how his connections would be able to find the Appellant in Mumbai, which is located thousands of kilometers away from where the Appellant used to live and has a population of millions.

vs.

[45] The Appellant was very clear in his testimony that the police are acting on the instructions of his brother. He stated this more than once. Corrupt police officers falsely accused him of assisting pro-Khalistan militant to harass him and they assisted his brother in extracting his revenge. There is insufficient evidence that the police have their own independent motive to harm the Appellant.

[22] For the Applicant, it is unclear whether the RAD considered his brother's influence on the police and as such, the decision lacks transparency, intelligibility and internal coherency.

[23] In my view, these two statements can be reconciled. In paragraph 29, the RAD makes a finding that the Applicant has not provided sufficient evidence that the police are acting on his brother's behalf and that the brother's influence is powerful enough to motivate the police to search for the Applicant in Mumbai. In paragraph 45, the RAD summarizes the Applicant's testimony that the police are acting on his brother's behalf before coming to the conclusion that there is insufficient evidence that the police have their own independent motive to harm the Applicant. The fact that the Applicant's testimony was "very clear" and repetitive does not indicate that the RAD accepted this testimony as sufficient evidence of his brother's influence on the police or that the police independently wish to harm the Applicant.

[24] The true contradiction lies in the Applicant's submissions. In his testimony before the RPD, he repeated that his brother had sufficient criminal and political influence to pressure the state authorities to harass him. In his submissions to this Court at paragraph 79 of his Memorandum of fact and law, he states: "It can clearly be the situation of the Applicant where he is falsely accused by police officers who are clearly under the influence of his brother and his

political connections.” However, at paragraph 9, the Applicant says the police were acting “either” on behalf of his brother “or” on their own initiative because they believed him to be an antinationalist. This implies that the Applicant is unsure of the police’s true motivation.

[25] Police corruption is widespread in India and false accusations occur to harass a person or as a means to extract the payment of a bribe. In the case at bar, the fact that the Applicant was released when his family and cousin paid bribes to the local police is evidence of such corruption.

[26] The RAD’s decision was reasonable especially given that the RAD found that the Applicant’s brother is unlikely to be motivated to find the Applicant if he abandons his rights in his half of the property. At the core of the Applicant’s refugee claim is the dispute about the land he inherited from his parents. In my view, it was reasonable for the RAD to find that once the Applicant’s brother loses motivation to find the Applicant, the local police will too.

(3) Means of the state authorities

[27] On this front, the Applicant argues that the RAD treated the documentary evidence selectively. The Applicant points to the evidence that the Crime and Criminal Tracking Network project (CCTNS) is used by over 15,000 police stations across India and that the tenant verification program exists in many cities, including Mumbai.

[28] However, the Applicant is not a criminal, he was not convicted of any crime or even accused of one. If the Applicant was really suspected of being an antinationalist, he would not have been released several times upon payments of a bribe.

[29] In any event, it was reasonable for the RAD to rely on the most recent objective evidence stating that interstate police communication is generally limited to cases involving major crimes or persons of interest. It was also reasonable to find that the local police were not likely to track the Applicant in Mumbai, a major urban centre with a population of about 21 million, using the interstate police communication.

V. Conclusion

[30] Having found that it was open to the RAD to find that the Applicant has an IFA in Mumbai, the intervention of this Court is unwarranted. The parties have not proposed any question of general importance for certification and no such question emanates from the facts of this case.

JUDGMENT in IMM-5476-22

THIS COURT'S JUDGMENT is that:

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

“Jocelyne Gagné”

Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5476-22

STYLE OF CAUSE: GURPREET SINGH SIDHU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTREAL, QUEBEC

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