

Federal Court



Cour fédérale

Date: 20240216

Docket: IMM-3078-23

Citation: 2024 FC 262

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 16, 2024

PRESENT: Mr. Justice Régimbald

BETWEEN:

AMARJEET SINGH SANDHU and RANJEET KAUR SANDHU

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are citizens of India. They are seeking judicial review of a Refugee Appeal Division [RAD] decision, dated February 10, 2023, which allowed the respondent's appeal and set aside the decision of the Refugee Protection Division [RPD] dated June 7, 2022, accepting their refugee protection claim. The RAD found that the applicants 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 [IRPA], because they have an internal flight alternative [IFA] in the city of Bengaluru.

[2] For the following reasons, the application for judicial review is dismissed. The RAD's decision is clear, justified and intelligible in light of the evidence submitted (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 8; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99). The applicants failed to demonstrate that the RAD's decision was unreasonable.

I. Factual background

[3] The applicants, Amarjeet Singh Sandhu and Ranjeet Kaur Sandhu [applicants], are citizens of India. They are originally from the state of Punjab. They claimed refugee protection in Canada because of their fear that certain leaders of the Shiromani Akali Dal [SAD] party, aided by the Punjab police, would persecute them if they returned to India.

[4] The applicants were previously supporters of the SAD Party, a political party in Punjab. In December 2016, they decided to support the Aam Aadmi Party [AAP], which has been in power in Punjab since 2017.

[5] The applicants allege that certain members of the SAD party, conspiring with the Punjab Police, are targeting them because of their change of allegiance. The applicants revealed that they were targeted twice by the Punjab police in 2017. First, they were arrested and accused of

supporting the pro-Khalistan movement; and in another instance, police allegedly invaded the applicants' home when Kaur Sandhu was there alone, and threatened her. The applicants also allege that they were attacked and threatened with death by persons unknown in Punjab, who accused them of supporting the AAP. Finally, the applicants moved to Delhi, where they stayed with family until arriving in Canada in April 2018.

[6] The RPD concluded that the applicants were credible and did not have an IFA in the proposed city of Bengaluru. The RPD reached this conclusion based on the unreasonableness of the proposed IFA in the second part of the analysis, without considering the analysis of the serious risk of persecution in the proposed IFA in the first part of the analysis. The Minister of Citizenship and Immigration appealed the decision to the RAD.

II. Impugned decision

[7] The RAD conducted its own analysis of the applicants' case and concluded that the RPD had not sufficiently analyzed the first prong of the IFA test. In making this analysis, the RAD concluded that the applicants had failed to prove that they would face a serious risk of persecution in the proposed IFA, Bengaluru.

[8] The applicants have the burden of proving that they will face a serious risk of persecution in Bengaluru should they relocate there. To do so, they must demonstrate, on a balance of probabilities standard, that the agents of persecution have the motivation and ability to pursue them in Bengaluru. According to the RAD, the applicants have not discharged this burden; they have

been unable to prove that SAD party members or the Punjab police would have the motivation or ability to pursue them in Bengaluru.

[9] On the one hand, the SAD has little influence outside Punjab and there is no evidence to show that SAD members have attempted to contact the applicants or their families since they left India. On the other hand, the Punjab police have neither the capacity nor the motivation to pursue them in Bengaluru. The evidence shows that there is little communication between police networks in India, and the applicants have not proven that the police would have the motivation to pursue them. In fact, the applicants allege that their agents of persecution are mainly members of the SAD party, and that the police are acting on their behalf.

[10] The RAD also concluded that the applicants will not face a serious risk of persecution as supporters of the pro-Khalistan movement, as they are not, in fact, supporters of the movement, but rather supporters of the ruling AAP party. Moreover, there is no reason to believe that they will be perceived as supporters of the pro-Khalistan movement in Bengaluru.

[11] On the second point, the RAD concluded that while applicants might face difficulties in Bengaluru, these difficulties are not likely to endanger their lives and safety. In short, Bengaluru is a reasonable IFA.

III. Standard of control and issue in dispute

[12] The only issue before the Court is whether the RAD's decision that the applicants should have an IFA in the city of Bengaluru is reasonable.

[13] The applicable standard of review is that of reasonableness (*Vavilov* at paras 10, 25; *Mason* at paras 7, 39–44). A reasonable decision is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85; *Mason* at para 8); and which is justified, transparent and intelligible (*Vavilov* at para 99; *Mason* at para 59). A reasonableness review is not a “‘rubber-stamping’ process”; it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). A decision may be unreasonable if the decision-maker has fundamentally misunderstood or disregarded the evidence before him (*Vavilov* at paras 125–126; *Mason* at para 73). Finally, the burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

IV. Analysis

[14] The test for an IFA is set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 1993 CanLII 3011 (FCA). This is a two-part test: (i) there is no serious possibility of the individual being persecuted in the IFA area, and (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833 at para 19; *Titcombe v Canada (Citizenship and Immigration)*, 2019

FC 1346 at para 15). To conclude that an IFA exists, both of the prongs must be met (*Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 15).

[15] The burden of showing that an IFA is unreasonable rests with the claimant, and it is an exacting one (*Huenalaya Murillo v Canada (Citizenship and Immigration)*, 2022 FC 396 at para 13; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 14). In this case, the applicants have not met this burden.

[16] The applicants first allege that the RAD's decision is unreasonable, as it allegedly misjudged the objective evidence in India's National Documentation Package [NDP] to speculate on the police officers' motivation. The applicants submitted evidence, in the form of an affidavit from Mr. Singh Sandhu's sister, attesting to the fact that police officers harassed him at her home in Delhi in 2017, when the applicant was living with her, and that they left only after receiving a bribe from her. The sister also mentions that these incidents have continued to persist since the applicants left India, and that each time she had to pay them a bribe to leave. According to the applicants, this continued harassment of the applicant's family in Delhi is proof that agents of persecution have the motivation to locate and persecute them anywhere in the country.

[17] In addition, the applicants argue that the RAD misjudged certain elements of the NDP, namely the information on the police's ability to track the applicants via the Crime and Criminal Tracking Network System [CCTNS], which is a police database containing information on criminals, or via their Aadhaar card for the tenant verification system. The applicants allege that:

(a) the police have the ability to identify the applicants with these systems anywhere in the country, and (b) the police have the motivation to pursue them to persecute them for personal advancement.

[18] Finally, the applicants cite the inherent difficulties of relocating outside Punjab for individuals from the Sikh minority.

[19] In my view, the RAD reasonably concluded that the applicants had not discharged their burden of proving that they would face a serious risk of persecution in Bengaluru in the event of their relocation.

[20] Although the testimony as to the harassment suffered by the applicant's family in Delhi was credible, it was reasonable for the RAD to conclude that the applicant's family had instead become a target for bribes by the police, and that this evidence did not demonstrate that the police necessarily had the motivation to persecute the applicants in Bengaluru.

[21] The applicants also argue that the police have the ability to track them anywhere in the country using the CCTNS system. However, the objective evidence of the NDP, on which the RAD reasonably relied, demonstrates that the CCTNS only contains information on serious crimes. Moreover, the NDP demonstrates that the police do not have the resources to use this CCTNS system other than to track down individuals who have been investigated for such crimes. Moreover, the applicants were not arrested for a serious crime, and the CCTNS contains no information on extrajudicial arrests (*Kumar v Canada (Citizenship and Immigration)*, 2022 FC

1059 at para 17; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1211 at paras 28–31; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1715 at para 38). Finally, there is no evidence in the file that the applicants’ personal information could be found at the CCTNS, since they have never been formally charged.

[22] The applicants also argued that the police would be able to locate them anywhere in the country with their Aadhaar card relating to the tenant verification system. The RAD examined the objective evidence contained in the NDP and reasonably concluded that the police have very limited means to carry out this type of search and make no effort to communicate with police forces in other states on tenant screening. In addition, the NDP states that if police agencies do conduct tenant screening, they do so through the CCTNS. However, as discussed above, there is no evidence that the applicants’ information is in the CCTNS since they have not been charged with a serious crime. Finally, the NDP demonstrates that the police cannot use biometric data from the Aadhaar card and the tenant verification system for criminal investigations (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1758 at para 31).

[23] The applicants also allege that the police could use the surveillance technology to locate them, including their cell phones. In this regard, the NDP demonstrates that this technology is primarily used by the state to monitor social media and the Internet. In this case, the RAD reasonably concluded that the evidence does not demonstrate that the applicants have a fear of the State in this regard, and there is no evidence that the applicants’ cell phones could be traced

following their return to India. These conclusions are reasonable in light of the evidence on file and the arguments presented before the RAD.

[24] Finally, the applicants argue that their profile as a seemingly pro-Khalistan Sikh minority, with a history with the Indian authorities and a precarious financial situation, means that they have a reasonable fear of persecution anywhere in India. The RAD has assessed the evidence to this effect and has reasonably concluded that the applicants are not pro-Khalistan. The applicants support the political party that is now in power in Punjab. They have had disputes with the police because of their change of allegiance, but there is no connection between these incidents and the applicants' proposition that the authorities in Bengaluru would perceive these incidents as demonstrating that they are supporters of the pro-Khalistan movement. Again, the evidence does not support the applicants' argument that they will face a reasonable fear of persecution in Bengaluru.

[25] Finally, as to the second prong of the IFA test, the applicants maintain that the Sikh minority faces discrimination throughout India, especially with doubts on their involvement with pro-Khalistan militant groups. In my view, the RAD reasonably assessed the objective evidence in the NPD, including the fact that Sikhs living in Bengaluru have access to housing, employment, healthcare, education, and enjoy freedom of religion. The RAD also assessed the personal circumstances of the applicants, such as the fact that they are not members of pro-Khalistan militant groups, as well as their work experience in India and Canada. The RAD recognized that the applicants may face difficulties in Bengaluru, but that these difficulties are not likely to

endanger their lives and safety (*Obineze v Canada (Citizenship and Immigration)*, 2018 FC 1150 at paras 9–10; *Abdullah v Canada (Citizenship and Immigration)*, 2021 FC 76 at para 23).

[26] In this case, the applicants have not shown that the RAD's decision as to the presence of an IFA in Bengaluru is unreasonable, or that the RAD committed an error justifying the Court's intervention.

V. Conclusion

[27] The RAD's decision is justified in light of the factual and legal constraints of the case (*Mason* at para 8; *Vavilov* at para 99).

[28] For these reasons, the application for judicial review is dismissed.

[29] No questions of general application have been submitted for certification, and the Court agrees there are none.

JUDGMENT in IMM-3078-23

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No questions are certified.

“Guy Régimbald”

Judge

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

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