

Federal Court



Cour fédérale

Date: 20240620

Docket: IMM-2636-23

Citation: 2024 FC 958

Ottawa, Ontario, June 20, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

**SUKHJINDER SINGH CHATRATH
GURTAJ SINGH CHATRATH
RAMANDEEP KAUR**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants seek judicial review of a Refugee Appeal Division [RAD] decision, dated January 31, 2023 [Decision], confirming the decision of the Refugee Protection Division [RPD] that they are not 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 Mumbai or New Delhi.

[2] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, I find that the applicants have failed to discharge their burden and demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[3] The applicants, Sukhjinder Singh Chatrath, Gurtaj Singh Chatrath and Ramandeep Kaur [applicants], are citizens of India. They have claimed refugee protection in Canada because they fear being persecuted should they return to India due to Sukhjinder Singh Chatrath's [principal applicant] involvement with the Aam Aadmi Party [AAP].

[4] The applicants allege that, in December 2014, the principal applicant started working for the AAP and became an active member. His work included arranging visits with local leaders and accompanying the Sarpanch on door-to-door visits. The applicants state that the principal applicant's involvement led to problems with members of the Shiromani Akali Dal Badal [SADB] party and the Congress party. In July 2016, the principal applicant was attacked and beaten. He complained to the police, but the police did not believe that Congress party goons were the culprits and told him to stay away from the Congress party. The police kept him overnight and the principal applicant claims that he was beaten. The principal applicant explains that police then began to harass him and searched his home.

[5] In February 2017, the Congress party won the election and the SADB won in the applicants' constituency. The Congress party allegedly wanted revenge on the principal applicant for causing them to lose votes; they therefore beat him again in April 2017. The police then refused to take the complaint of the principal applicant's father and threatened him to stay away from the Congress party, or he would be killed. The principal applicant also tried to complain to the Senior Superintendent of Police with no success.

[6] In May 2017, the police raided the applicants' home when the principal applicant was absent. They took his wife [associate applicant] to the police station to question her on his whereabouts and they allegedly tortured and raped her. She was released the next day with the help of the Sarpanch and other influential people. Her signature and fingerprints were taken on a blank piece of paper. She then joined her husband in Karnal, Haryana and, with the help of an agent, the applicants travelled to Canada in September 2017 and made their refugee claim at the airport.

[7] On June 3, 2022, the RPD rejected their refugee protection claims. The RPD concluded that the applicants were not Convention refugees nor persons in need of protection under the IRPA and found that they have a viable IFA in Mumbai or New Delhi.

III. Decision under review

[8] In its January 31, 2023 Decision, the RAD dismissed the appeal and confirmed the RPD decision.

[9] The RAD found that the agents of persecution do not have the motivation nor the means to pursue the applicants elsewhere in India and that it is not unreasonable for them to relocate to the suggested IFAs. As such, it found that Mumbai or New Delhi were viable IFAs for the applicants.

[10] Under the first prong of the IFA test, the RAD concluded that the agents of persecution do not have the motivation to locate the applicants in the proposed IFAs. The RAD agreed with the RPD that the evidence of ongoing threats and harassment to the principal applicant's father and family is questionable because it was presented for the first time on the day of the hearing, about four and a half years after their Basis of Claim narrative was written. The applicants further alleged that the Congress party goons were responsible for the principal applicant's father's death and that his relatives in Haryana were questioned by police; to which the RAD answered that even if this evidence was accepted, it did not prove a motivation to locate the applicants elsewhere in the country.

[11] The RAD identified the local Congress party as the primary agents of persecution. It concluded that the police's actions, including the absence of formal proceedings against the applicants in the arrests and their assault of the associate applicant, indicated illegal detentions initiated not because of legitimate police concerns but because of political rivalry and vengeance.

[12] The RAD recognized that the police have continued to question the relatives in Haryana but noted that there is no evidence on the frequency at which they are visited nor any evidence of escalation of the police's efforts. The RAD found that the police limited their questioning to the

last places the principal applicant resided and have done nothing more to demonstrate a desire to find the applicants in the proposed IFAs.

[13] The RAD found it significant that the police did not approach the applicants' closest relatives and that it had not advanced nor escalated their efforts to find the applicants. The RAD opined that the police had only looked for the applicants in the most obvious known locations such as their home or with neighbours and that no First Information Report [FIR] was filed against them nor have any charges been laid. The RAD concluded that the police and Congress party may have an interest in the applicants locally but that there is no evidence that they are motivated to locate them elsewhere in India.

[14] On the means to pursue the applicants, the RAD concluded, based on the objective country evidence, that it is unlikely for the applicants to be found based on the tenant verification system because the only nationwide police database, the Crime and Criminal Tracking Network and Systems [CCTNS], does not officially record illegal detentions such as the ones experienced by the applicants.

[15] On the second prong of the IFA test, the RAD found that the IFAs are reasonable. The RAD found that there is no need to seek protection in the new cities because the agents of persecution do not have the means nor the motivation to find the applicants in the IFAs.

IV. Issues and standard of review

[16] The only issue before the Court is whether the RAD's decision confirming that the applicants have a viable IFA in Mumbai or New Delhi is reasonable.

[17] The standard of review applicable to the merits of the RAD's Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a “rubber-stamping” exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

[18] The test to determine if an IFA is viable in the claimant's country is set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA). The test is two-pronged: the claimant has an IFA when (1) they will not be subject to a serious possibility of persecution nor to a risk of harm under section 96 and section 97 of the IRPA in the proposed IFA location; and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances.

[19] Both prongs must be satisfied in order to make a finding that a claimant has an IFA (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 597–598; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10–12; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 9 [*Leon*]; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1623 at para 16 [*Singh* 2023 FC 1623]; *Bassi v Canada (Citizenship and Immigration)*, 2024 FC 910 at para 16 [*Bassi*]).

[20] On the first prong of the test, the applicants bear the onus of demonstrating that the proposed IFA is unreasonable because they fear a possibility of persecution throughout their entire country. In order to discharge their burden, a claimant must demonstrate that they will remain at risk in the proposed IFA from the same individual or agents of persecution that originally put them at risk. The risk assessment considers whether the agents of persecution have the “means” and “motivation” to cause harm to the claimant in the IFA (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8 [*Singh* 2023 FC 996]). The applicants must establish that the agents of harm have both elements: the means and the motivation to cause harm (*Ortega v Canada (Citizenship and Immigration)*, 2023 FC 652; *Leon* at para 13). This assessment must be made by the decision maker, is a prospective analysis, and is considered from the perspective of the agents of persecution, not from the claimant’s perspective (*Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 29; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21; *Aragon Caicedo v Canada (Citizenship and*

Immigration), 2023 FC 485 at para 12). The onus is therefore on the applicants to adduce sufficient evidence or facts to discharge their burden of proof and demonstrate, on a balance of probabilities, that the agents of persecution have the means and motivation to locate them in the proposed IFA and that therefore, they will be subject to a serious possibility of persecution under section 96, or to a likelihood of a section 97 danger or risk in the proposed IFA (*Singh* 2023 FC 1623 at para 17; *Bassi* at para 17).

[21] For the second prong of the test regarding the reasonability of the refuge in other parts of the country, the threshold is very high and applicants for asylum must present actual and concrete evidence of the existence of conditions that would jeopardize their life or safety if they were to attempt to relocate to that part of the country (*Ranganathan v Canada (Minister of Citizenship and Immigration)*(CA), 2000 CanLII 16789 (FCA) [*Ranganathan*]; *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at paras 20–21 [*Jean Baptiste*]; *Singh* 2023 FC 1623 at para 18; *Bassi* at para 18).

A. *The RAD reasonably found that the agents of persecution do not have the motivation or the means to locate the applicants in the proposed IFAs*

[22] The applicants submit that the RAD erred in its finding that the agents of persecution do not have the motivation to locate them. The applicants argue that they have provided affidavits from multiple neighbours and other individuals proving that the police have continued to come to their residence in their home village and to relatives in Haryana to inquire about them and their whereabouts.

[23] In my view, the RAD's analysis on the motivation of the agents of persecution, under the first prong of the IFA test, is reasonable. The RAD took into consideration the affidavits from neighbours in their village and the relatives in Haryana and recognized the continued inquiries by the police about the applicants. However, on the evidence adduced, the RAD reasonably came to the conclusion that the applicants have not proven that the agents of persecution have the motivation to locate them elsewhere in India.

[24] Indeed, the fact that the police is willing to locate the applicants within their own village or in Haryana does not demonstrate that they would be motivated and capable to locate them outside of the state of Punjab, which is what the applicants have to demonstrate to meet the IFA test (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1151 at paras 15–16

[*Singh* 2023 FC 1151]; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1211 at para 34 [*Singh* 2023 FC 1211]; *Bassi* at para 27).

[25] The applicants also argue, citing *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586 [*Zamora Huerta*], *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*], and *AB v Canada (Citizenship and Immigration)*, 2020 FC 915 [*AB*], that it would be unreasonable to expect them to hide their location from their family and friends.

[26] However, these cases are distinguishable. In *Zamora Huerta*, *Ali* and *AB*, there was evidence that the applicants' relatives would be in danger if they lied to the persecutors about the applicants' whereabouts. There was also evidence that the persecutors had the capacity and

willingness to pursue the applicants in their new locations based on the acquired information (*Singh 2023 FC 1211* at para 33; *Bassi* at para 26).

[27] As held by Justice Rochester in *Singh 2023 FC 1151* at paragraph 17:

[T]he holdings in these [three cited cases] are fact-specific and cannot be generalized to every IFA situation. They are distinguishable on the basis that in those cases there was sufficient evidence that the agents of persecution had the motivation to locate the claimants. The Punjab police's mere knowledge of the whereabouts of the Applicants, assuming the families would disclose it, does not establish a serious possibility of persecution or risk in the proposed IFA cities if the Punjab police have neither the means nor the motivation to act on it.

[28] Furthermore, as held in *Singh 2023 FC 996* at paragraph 24, the fact that an agent of persecution acquires knowledge of a claimant's whereabouts does not establish a risk if the agent is unable or unwilling to act on it. Indeed, in *Singh 2023 FC 996*, the applicants relied on *Ali* to argue that they would be forced to hide from family and friends. Justice McHaffie, in *Singh 2023 FC 996* at paragraph 24, held that:

[...] The ultimate assessment in the first prong of the IFA test is whether the claimant would face a serious possibility of persecution on a Convention ground, or a likelihood of a section 97 danger in the IFA. The agent of persecution's mere knowledge of the location of the claimant does not alone establish such risk or danger if they are unable or unwilling to act on it. In *Ali*, Justice Russell concluded the evidence showed that the agents of persecution were willing (*i.e.*, motivated) to pursue the applicants beyond their region: *Ali* at paras 44–46. As a result, the knowledge of the applicants' whereabouts resulted in the dangers posed, provided the agents of persecution had the operational capacity to carry out their motivation, an issue Justice Russell also addressed: *Ali* at paras 56–58. In the present case, the RAD found the evidence did not establish the Haryana police had the means or the motivation to pursue Mr. Singh beyond Haryana. Simply stating that they could potentially obtain knowledge of his location

through his father is insufficient, even if the applicants had put this argument before the RAD.

[29] Similarly in this case, there is no evidence that the police has the motivation to find the applicants in the proposed IFAs, even if the police would be able to determine the applicants' location by questioning their family and neighbours.

[30] The applicants also argue that the RAD erred in their finding that the agents of persecution do not have the means to locate them. The applicants submit that the objective evidence, in item 10.13 of the National Documentation Package [NDP], indicates that the scope of the CCTNS was extended and now integrates data from police and fingerprints, and that it is deployed in all the police stations throughout the country and connected in 97% of them. According to the applicants, given that Punjab is in the top three states with the most access to a functioning CCTNS database, police would be able to track them through the tenant verification system.

[31] In my view, the RAD's analysis and conclusions regarding the means of the agents of persecution to locate the applicants are reasonable. The RAD did take into consideration the police interactions with the applicants, including the taking of the associate applicant's fingerprints and signature, and reasonably weighed this evidence with the fact that no evidence was presented to indicate that a FIR was filed against the applicants, that charges were laid or that there are summons or warrants for their arrests. The applicants have therefore not provided enough evidence to the RAD to discharge their burden and demonstrate that their information would be in the CCTNS or in the tenant verification system. The RAD further noted, as per the

objective evidence in the NDP, that interstate police communication is normally for heinous, serious and high profile crimes, which was not the case here.

[32] The objective evidence in item 10.13 of the NDP indeed states that, with the exception of major crimes, there is little interstate police communications. Furthermore, the CCTNS does not contain information on extra-judicial arrests (*Kumar v Canada (Citizenship and Immigration)*, 2022 FC 1059 at para 17; *Singh* 2023 FC 1211 at paras 28–31; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1715 at para 38; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 64 at paras 20-23; *Singh Sidhu v Canada (Citizenship and Immigration)*, 2020 FC 191 at paras 26-29; *Sandhu v Canada (Citizenship and Immigration)*, 2024 FC 262 at para 21; *Bassi* at para 23). The CCTNS database is one of the main tools used in the tenant verification system and, although a mandatory tenant verification system does exist, the evidence on the efficiency of this system is mixed, as it suggests that there are not enough resources to follow up on all the tenant verification forms (*Bassi* at para 22).

[33] It was therefore reasonable for the RAD, after taking into account the entirety of the evidence, to conclude that the applicants have not demonstrated on a balance of probabilities that the agents of persecution have the means and motivation to locate them in the proposed IFAs.

B. *The RAD's finding on the second prong of the IFA test is reasonable*

[34] The applicants submit, citing items 1.5 and 2.1 of the NDP, that although a medical report presented into evidence does not address the associate applicant's mental health, it is clear that survivors of rape are affected psychologically and it is unreasonable for the RAD to compel

the associate applicant to return to an environment with high levels of gender-based violence and high levels of corruption. They further argue that the RAD erred because it did not take into consideration the healthcare system in India, citing passages from item 1.14 of the NDP, on the shortages of staff and supplies as well as extremely limited mental health resources.

[35] I disagree with the applicants. A decision maker is presumed to have considered the entirety of the record before them unless evidence of the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1; *Ayala Alvarez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 703 at para 10; *Herrera Andrade v Canada (Citizenship and Immigration)*, 2012 FC 1490 at para 11; *Boeyen v Canada (Attorney General)*, 2013 FC 1175 at para 53; *Abdi v Canada (Citizenship and Immigration)*, 2018 FC 47 at para 38; *Leblanc v Canada (Attorney General)*, 2019 FC 959 at para 34; *Senat v Canada (Public Safety and Emergency Protection)*, 2020 FC 353 at para 34; *Kamikawa v Canada (Citizenship and Immigration)*, 2024 FC 873 at para 18; *Bassi* at para 21).

[36] The RAD's finding on the second prong of the test is reasonable. The RAD did take into consideration the associate applicant's mental health due to the traumatic events she experienced and it reasonably found that, although limited, there are mental health care facilities and services in both states where the proposed IFAs are located. With the high threshold required to demonstrate the existence of conditions that would jeopardize their life and safety if they relocate to the suggested IFAs (*Ranganathan; Jean Baptiste* at paras 20–21), it was reasonable for the RAD to conclude that this threshold was not met.

[37] Consequently, the applicants have not discharged their burden to demonstrate that the RAD's decision is unreasonable. The RAD's reasoning as to why the applicants have a viable IFA is intelligible, transparent and justified (*Vavilov* at paras 15, 98). The RAD's findings on the potential IFAs are factual, based on the evidence and the arguments presented by the parties. I therefore find no basis upon which to intervene (*Singh 2023 FC 1151* at para 19; *Singh 2023 FC 1211* at para 38; *Bassi* at para 33).

VI. Conclusion

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

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

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

JUDGMENT in IMM-2636-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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