Federal Court  Cour fédérale

Date: 20240606

Docket: IMM-4750-23

Citation: 2024 FC 855

Toronto, Ontario, June 6, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

DAVINDER SINGH
NAVDEEP KAUR
GURNOOR SINGH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada (IRB). The RAD dismissed an appeal of a decision of the Refugee Protection Division (RPD), in which the RPD found that the Applicants are not Convention refugees or persons in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] The RAD and the RPD both found that the Applicants had safe and viable internal flight alternatives [IFAs] within India.

[3] For the reasons that follow, I find that the RAD's decision was reasonable. As a result, I dismiss this application for judicial review.

I. FACTS

[4] The Principal Applicant [PA], Davinder Singh, is a Sikh man from Punjab, India. He is married to the Associate Applicant [AA], Navdeep Kaur. They are the parents of the minor Applicant, Gurnoor Singh.

[5] The PA claims that his family has had a long history of mistreatment at the hands of Indian police because of their alleged association with Sikh militancy. The PA claims that in 1992 his father was arrested by Indian authorities, and that he ultimately died because of police torture. The events that led to the Applicants' departure from India arose much later, in 2019, and related to police interest in Harpawan Singh [HS], who is the husband of the PA's sister. HS was an active member of the nationalist, pro-Khalistani party known as Shiromani Akali Dal-Amritsar [SAD-A].

[6] HS was allegedly arrested and tortured by the police on several occasions; in November 2018, he left the community and disappeared, violating the conditions of his release. As a result, the police began to harass the Applicants and their extended family, believing that they were harbouring HS.

[7] In March 2019, the PA's sister began to reside with the Applicants. Soon after, the police conducted an early morning raid on the Applicants' home in search of HS, during which the PA and his sister were arrested. While in detention, the PA was tortured and beaten. He and his sister were only released upon payment of a bribe. They were not formally charged, although the police did take the PA's fingerprints, photo, and his signature.

[8] Due to ongoing pressure from the authorities, the PA later fled to a relative's house in the neighbouring state of Haryana. During this time, the Associate Applicant was detained by the police. She was accused of holding meetings for the militants. The police also questioned her about her family's whereabouts. As with the PA, she was not formally charged, but was forced to provide her signature and fingerprints, and was released with the assistance of "influential people." During her detention, she told police about the PA's whereabouts. The police then raided the relative's home in Haryana, but the PA had already left for the city of Chandigarh.

[9] The Applicants eventually reunited in Chandigarh. They subsequently left India in December 2019, and made claims for protection in August 2020.

[10] Since coming to Canada, the Applicants have become active members of the Khalistan movement.

A. *Procedural History*

[11] Following a hearing in July 2022, the RPD dismissed the Applicants' claims for refugee protection, finding that they had viable IFAs in Kolkata, Delhi, Mumbai, and Lucknow. They appealed the decision to the RAD.

[12] The RAD affirmed the decision of the RPD. In doing so, it declined to admit new evidence submitted after the perfection of their appeal. This evidence related to activities in support of the pro-Khalistani political movement, in which the Applicants had participated since coming to Canada.

[13] The RAD agreed with the RPD that the Applicants had viable IFAs in the proposed locations. The RAD found that the actions of the police were more likely related to an effort to extract bribes from the Applicants, than any genuine belief in their militant activity. As a result, the RAD found that the police would have neither the motivation, nor the means to find the Applicants in the proposed IFA locations. The RAD also agreed with the RPD's findings that it would not, in the circumstances, be unreasonable to expect the Applicants to relocate to those locations.

II. ISSUES

[14] The Applicants raise a number of issues, most of which question whether the RAD's IFA findings were reasonable. This is the principal issue on judicial review.

[15] The Applicants also make broad statements that the RAD decision was unfair. However, these statements were not explicitly elaborated upon in argument. On my own review of the Applicants' arguments, I do not observe any clearly articulated allegations that the RAD decision was rendered in a procedurally unfair manner.

[16] As such, the sole issue to be determined is whether the RAD decision was reasonable.

III. STANDARD OF REVIEW

[17] Further to the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, there is no dispute that the applicable standard of review in this matter is reasonableness.

[18] In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). Reasonableness is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

[19] To make a determination on reasonableness, a reviewing court asks whether the decision in question bears the "hallmarks of reasonableness" – justification, transparency, and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints: *Vavilov* at para 99. Any flaws or shortcomings identified in the decision-maker's reasons must be sufficiently central or significant, to render the decision unreasonable.

IV. ANALYSIS

A. *IFA Principles*

[20] A basic principle of refugee law is that it is a surrogate form of protection for those who are unable to obtain protection within their own country and, as such, are at risk of persecution. A necessary corollary to this principle is that if an individual has a well-founded fear of

persecution in one part of their country, but does not face such a risk in another part of the country, refugee protection is not required. This is the principle known as the internal flight alternative.

[21] One exception to this general principle has been carved out in Canadian jurisprudence. If an individual may find safety from persecution in an internal location, but it would be (for a variety of reasons) objectively unreasonable to expect the person to reside in that location, refugee protection should still be conferred.

[22] Putting together the principle of internal protection with the reasonableness exception has resulted in a well-known two-part test for assessing internal flight alternatives. Originating from the decision of the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA) [*Rasaratnam*], the test is as follows:

1) Would the claimant face more than a mere possibility of persecution in the proposed IFA location? Or, in the context of section 97 of the IRPA, would the claimant be personally subject to a risk to their lives or risk of cruel and unusual treatment or danger of torture in the IFA location?

2) Are conditions in the proposed IFA location such that it would be unreasonable, in all the circumstances including those particular to the claimant, to seek refuge there?

[23] While the Applicants make some general allegations that the RAD committed legal errors in rejecting their appeals, they do not suggest that the RAD inaccurately articulated the above test. Their core argument, rather, is that the RAD's application of the evidence to the test was unreasonable.

B. *Safety of Relocation to the IFA Locations – The RAD decision was reasonable*

[24] The RAD found the Applicants had failed to establish that the Indian police forces had either the motivation or the means to find them in the proposed IFA locations of Kolkata, New Delhi, Mumbai or Lucknow. In arriving at this conclusion, the RAD first noted that the police had quickly, and without formal charges, released the Applicants from detention upon payment of a bribe and/or the intervention of "influential people." As a result, the RAD found that the Punjab police arrested the PA and the AA "corruptly to harass and intimidate them and to further the solicitation of bribes but not because they were seriously thought to have been aiding militants." Though not explicit in the Reasons, I take it that the above findings were meant to suggest that, since the Punjabi police did not actually suspect the Applicants of being engaged in terrorist activity, they would have limited motivation to find the Applicants in the proposed IFA locations.

[25] I do not find there to be any fatal flaws in the overarching logic of the above conclusions: *Vavilov* at para 102. This is not to minimize the very difficult experiences that the Applicants recount in their Basis of Claim forms. The RAD did not question whether these experiences took place, but found that the motivation behind the Applicants' detentions was more likely related to bribery and intimidation than any *bona fide* belief that the Applicants were militant operatives. The RAD provided a rationale for this conclusion – one that was rooted in the evidence and, as such, I cannot find that it was unreasonable.

[26] On the question of means, the RAD first acknowledged the Applicants' claim that the police had come to his relatives' home in Haryana. However, the RAD also noted that Haryana

and Punjab are closely neighbouring states, with a centrally administered capital city. The relationship between Punjab and Haryana, the RAD continued, could not be projected onto the rest of the country, including the proposed IFA locations.

[27] Referring extensively to the documentary evidence, the RAD also concluded that it was unlikely that local Punjabi police, even if motivated, could locate the Applicants in the proposed IFAs. In arriving at this conclusion, the RAD considered various means that the police could potentially have at their disposal, including the Crime and Criminal Tracking Network and Systems (CCTNS) database, the tenant verification system, AADHAR identity cards, or facial recognition software.

[28] The documentary evidence before the RAD was both voluminous and, in places, ambiguous. On the one hand, there is evidence indicating increased repression of minority groups and enhanced police capacity to monitor, coordinate, and cooperate on a national level. On the other hand, there was evidence in the record casting doubt as to whether local police could nationally trace individuals who are not listed in any national databases, such as the Applicants.

[29] The Applicants urge the Court to prefer the evidence indicating that the police, if properly motivated, could find them in the IFA locations. While I can appreciate that the Applicants have a different perspective on the information that was before the RAD, this effort to have the Court re-evaluate the evidence is not its role on judicial review. The RAD did not disregard or ignore evidence that ran contrary to its conclusions. It acknowledged that Indian police forces can coordinate to identify and track down those suspected of having committed

serious crimes, and for whom a First Information Report (FIR) has been generated. On the facts, however, the RAD found that the Applicants simply did not have the profile of those who are likely to be sought by the police throughout India. There was no indication that the police had generated a FIR in respect of the Applicants, and no other information that the police genuinely believed them to be militants.

[30] As a result, I find that it was reasonable for the RAD to conclude that the Applicants would not be subjected personally to a danger of torture, or to a risk to life or a risk of cruel and unusual punishment, or face a serious possibility of persecution in the proposed IFA locations.

C. *Reasonableness of Relocation to the IFA Locations – The RAD decision was reasonable*

[31] I come to the same conclusion with respect to the RAD's brief analysis of the reasonableness of the IFA locations. The submissions from Applicants' counsel on the reasonableness issue are difficult to discern. At the outset, counsel argues that the RAD simply adopted the RPD findings and failed to make an independent assessment of the second prong of the IFA test. This allegation is patently unfounded. Indeed, in this section of the RAD's reasons, it did not refer at all to the RPD's findings, but engaged in an entirely independent assessment of the documentary and personal evidence, and the applicable legal test.

[32] Citing Rasaratnam, counsel next argues that the RAD erred in failing to consider that "an IFA is merely meant to be a convenient way of describing a fact scenario in which a person may be in danger in one part of the country but not in another." I fail to see what relevance this statement has to the second prong of the *Rasaratnam* test. Counsel repeats that the Applicants

will face fear and threats in the IFA locations, but does not address any of the specific criteria referred to by the RAD in concluding that it would be reasonable for the Applicants to relocate to the IFA locations.

[33] On my own review of the RAD's analysis of the second prong of the *Rasaratnam* test, I find that the Member's analysis is reasonable in the sense contemplated in *Vavilov*. That is, it discloses an internally coherent chain of reasoning that is justified in light of the relevant legal and factual considerations. The RAD actively engaged with the Applicants' submissions on the hardship they would experience in the IFA locations. It accurately referred to the documentary evidence and evaluated key considerations in the IFA locations, including employment and accommodation, language, and religious discrimination against Sikhs living outside Punjab.

[34] The RAD did not suggest that it would be easy for the Applicants to relocate to the IFA locations. The RAD acknowledged that there has been a rise in Hindu nationalism, and that Sikhs face discrimination and allegations of separatism. However, these realities do not *necessarily* render an IFA location unreasonable. This is in part because, as the RAD pointed out, there was also documentary evidence in the Record indicating that the Applicants would have legal recourse should they experience discrimination or other mistreatment in the IFAs because of their Sikh identity. On the facts that were before the RAD, including those particular to the Applicants, I find that its conclusions on the second prong of the *Rasaratnam* test were reasonable.

V. CONCLUSION

[35] For the foregoing reasons, this application for judicial review will be dismissed. The parties have not proposed any questions of general importance and none arise from this case.

JUDGMENT in IMM-4750-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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