

Federal Court



Cour fédérale

**Date: 20240723**

**Docket: IMM-7110-23**

**Citation: 2024 FC 1142**

**Ottawa, Ontario, July 23, 2024**

**PRESENT: The Honourable Madam Justice Tsimberis**

**BETWEEN:**

**ANIL KUMAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Anil Kumar [Applicant] makes this application for judicial review of the May 23, 2023 decision by the Refugee Appeal Board [RAD] confirming the refusal of his refugee claim by the Refugee Protection Division [RPD], finding that the Applicant's allegations have no connection with the Convention Relating to the Status of Refugees [Convention] and therefore is not a Convention refugee under s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c

27 [IRPA], and that he had not established that he would likely be personally exposed to any forms of serious harm making him a person in need of protection if he were to relinquish his rights to the land in question that would make him a person in need of protection under s 97 of the IRPA [Decision].

## II. Background

[2] The Applicant, an Indian citizen, claimed that he faced threats and potential harm from his neighbours, who wanted to acquire his land at an unreasonably low price. To pressure the Applicant into giving up his land, his neighbours allegedly used their connections with the Punjab police to target him. In September 2018, some of the neighbours' alleged accomplices attempted to confront the Applicant at his home, but he and his family managed to escape. When the Applicant reported the incident to the police, an officer allegedly warned him to comply with his neighbours' demands or face life-threatening consequences. The Applicant was allegedly informed that his neighbours and the police were searching for him with the intention of killing him in a "fake encounter." As a result, the Applicant fled to his cousin's house in New Delhi and, with the help of an agent, left India and came to Canada in October 2018.

## III. Decision under review

[3] The RAD reviewed the Applicant's appeal against the decision of the RPD and upheld the RPD's ruling. The RAD found that the Applicant's allegations of threats and harm related to a land dispute with his neighbours and not related to any of the Convention grounds for persecution. Moving then to whether the Applicant was a person in need of protection, the RAD

found that the Applicant had not provided sufficient evidence to establish that his neighbours or the police would still be interested in him if he gave up his land.

[4] The RAD also addressed the issue of credibility, which the Applicant argued to the RAD was determinative of the RPD's decision. The RAD disagreed with the Applicant and noted that the RPD had in fact accepted the Applicant's account of events as he had claimed and accepted that the Applicant was a credible witness. The RAD noted that the determinative issue for the RPD was the insufficiency of the evidence to support the Applicant's claim that his neighbours and the police would still be interested in harming him if he gave up the land. This was not a credibility finding as it merely noted insufficient evidence in support of the Applicant's allegations.

[5] The RAD agreed with the RPD's summary of the relevant jurisprudence to the effect that applicant asylum seekers are expected to make reasonable choices to avoid certain risks as long as there is no deprivation of fundamental human rights, such as the right to earn a living, citing *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at paragraph 19 and *Singh v Canada (Citizenship and Immigration)*, 2021 FC 595 at paragraph 16. The RAD summarized the evidence (both documentary and testimonial) and agreed with the RPD's assessment that the Applicant's primary motivation for retaining the land was that it had belonged to his family for generations and his attachment to the land, rather than a necessity for his livelihood, and it was reasonable to expect the Applicant to relinquish his rights to the land in order to live safely in his home country of India. The RAD noted that the RPD had correctly concluded that the Applicant

had not established, on a balance of probabilities that his neighbours, accomplices or the police would wish to cause him serious harm if he surrendered his rights to his land.

[6] The RAD also found it was unnecessary for the RPD to consider the issues of state protection or the existence of internal flight alternatives because the Applicant did not demonstrate that he would be exposed to a probability of serious harm or a serious possibility of persecution if he had to relinquish his land. Consequently, the RAD rejected the appeal, affirming that the Applicant was neither a Convention refugee nor a person in need of protection.

#### IV. Issue & Standard of Review

[7] The arguments raised by the Applicant in challenging the Decision, as canvassed below, are subject to review on a standard of reasonableness. As such, the issue for the Court's determination is whether the Decision is reasonable.

[8] The Supreme Court of Canada has established that when conducting a judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23).

[9] The reasonableness standard “requires that a reviewing court defer” to a decision that is based on “an internally coherent and rational chain of analysis” and be “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 85 and 99). In assessing whether a decision is reasonable, the Court will assess whether the decision is appropriately

justified, transparent and intelligible. Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (see *Vavilov* at paras 15, 95, 136).

[10] As there is no breach to the procedural fairness duty at issue, the Court applying the reasonableness standard does not ask what decision it would have made in place of the administrative decision maker. It is “an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers” (*Vavilov* at para 13).

[11] The decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125).

[12] Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

[13] Finally, the onus is on the party challenging the decision to prove that it is unreasonable.

## V. Analysis

[14] In its written and oral submissions, the Applicant raised two key arguments related to their two framed issues that the RAD was unreasonable (1) in its finding that the Applicant give up his land and (2) that the Applicant had no nexus to a Convention ground. The first argument was that the RAD erred in failing to consider the Applicant's "ancestral right" as an "indigenous person" to their region in India to the land underlying their property dispute, and so the RAD did not consider how the suggestion that the Applicant should relinquish the property affected their fundamental right to their "ancestral land" in India as though they were an Indigenous person in Canada. The second argument was that the RAD erred in failing to consider the Applicant's perceived political opinion and how it formed part of the basis for their claim, thereby establishing a nexus with a Convention ground.

### A. *Property Rights*

[15] Dealing with the first issue, I first note that the Applicant did not argue to the RPD or the RAD that they have some fundamental right to their land as a result of their assertion of "indigenous" status in India. These arguments are new to this matter and were raised in written and oral submissions; nonetheless, the Applicant asserts it is open for them to make these arguments because they share a sufficient nexus with the arguments they did advance to the RAD and therefore the RAD should have considered these factors regardless of whether the arguments were made. With respect, the only instance the Applicant could point to in the record where this line of arguments *may* have come within scope is two lines of the RPD hearing's transcript where the Applicant testified that the land underlying their property dispute was

“ancestral land.” I disagree with the Applicant that this is sufficient to open a new line of attack against the Decision when no such arguments were made to either of the tribunals. Further, the only fundamental right discussed by the tribunals was the fundamental right to earn a basic living, and even only then to illustrate that the Applicant demonstrated no such issue in this case. It would be improper to fault the tribunals for failing to consider an argument that the Applicant did not raise, and I cannot find the Decision unreasonable on that basis.

[16] At the outset, two ancillary issues bear discussion on the Applicant’s argument on this point.

[17] First, the Applicant submits that the property rights as understood in a Western context are not the correct lens through which to analyze the Applicant’s connection to his ancestral land, as the Applicant’s connection to the land is more fundamental to his *identity* than a simple private property right. In support of this fundamental *identity* claim to his land, the Applicant baldly and boldly asserted that they have somehow acquired some legal right to their land in India by the same reasoning as Canada’s “recognition of the importance of the relationship between Aboriginal peoples and the land”, citing *Platinex Inc. v Kitchenuhmaykoosib Inninuwug First Nation*, 2006 CanLII 26171 (ON SC) at paragraph 80. I find this assertion deprived of clear and objective evidence to substantiate such a right (especially in the face of a distinct lack of evidence on this point in their record and submissions, as well as the National Documentation Package), a baseless effort to assert a simple private property right as a fundamental human right, and an arguably offensive effort to co-opt the generations of turmoil and colonial governance

suffered by Canada's Indigenous peoples for the Applicant's own personal gain. In this age of reconciliation, this and similar such efforts must be abhorred and denied with fervency and zeal.

[18] Second, the context of the Applicant's assertion in the RPD's hearing transcript that their land is "ancestral land" explains that they only assert the land as "ancestral" because, as the Applicant himself said, "[i]t's from generations that place... [m]y children were born there, I was brought up there. If I was just going to give them the land then I wouldn't have to be here. To give them the land, to us it is like selling our mother." In that sense, the Applicant appears to argue they have acquired some fundamental human right to this land because it has been kept in the family for generations. If we were to apply this logic within the confines of Canadian immigration law, any person who has received property from the estate of their mother, or indeed any ancestor, has a fundamental human right that attracts refugee protection if someone were to seek to acquire that land. Carried *ad absurdum*, this line of reasoning would make real property transactions a prickly issue for refugee claims, and the expropriation of residential land by a government would be a humanitarian crisis. Such reasoning is, in my opinion, devoid of merit and cannot succeed.

[19] Furthermore, the Applicant's arguments invite this Court to reweigh the evidence, which is not appropriate on judicial review.

[20] In its Decision, the RAD (and the RPD before it) cited and reasonably applied the jurisprudence of the Federal Court of Appeal and Federal Court.



[21] I have considered the able submissions of the Applicant's counsel, which argued that the Applicant's testimony in the case at bar was that he *could not* sell his ancestral land as doing so would be "like selling our mother" and which was more than an economic concern but a fundamental connection to the ancestral land and which tried to distinguish the various cases of the Federal Court, including the recent case of *Khair v Canada (Citizenship and Immigration)*, 2023 FC 374 [*Khair*]. With respect, I disagree. In the absence of any evidence that the Applicant could not find a new place to live in India or would otherwise be affected in a fundamental way by the loss of his home/ancestral land, the RAD reasonably determined that the underlying principles for which those cases stand is applicable here (see *Khair* at para 45). On the record before it, it was reasonable for the RAD to conclude that the evidence was not sufficient to engage a principle of fundamental human rights. The RAD reasonably concluded that it was reasonable to expect that the Applicant would give up the land if it meant he could live safely in his home country of India.

[22] While the Applicant testified that if he gave up his land, his perpetrators would still be looking for him, the Applicant did not provide any evidence to support these allegations. As such and as reasonably concluded by the RAD, the Applicant has not established on a balance of probabilities that his neighbours, their accomplices, and/or the police would wish to cause him serious harm if he surrendered his rights to the land.

[23] For these reasons, the Decision was not unreasonable in finding that the Applicant's claim was grounded in a simple private property dispute such that it does not have a nexus with a Convention ground as per the jurisprudence.

B. *Perceived political opinion*

[24] The issue of the Applicant's allegedly perceived political opinion can be dismissed without needing to turn to the past dealings of this Court with the actual issue of perceived political opinions because it is not truly an argument about their perceived political opinion at all. The Applicant relies on the point that a well-founded fear of persecution need not be based on actual political opinion and can be based on a perceived political opinion because the examination of the alleged persecution should be approached from the perspective of the alleged persecutor (*Gopalapillai v Canada (Citizenship and Immigration)*, 2019 FC 228 at para 12, citing *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 at 747). The Applicant frames this issue as that the RAD found them and their evidence credible in that the police had arrested and accused him of links with militants, and therefore he has a nexus to the Convention ground of *imputed* political opinion.

[25] The evidence offered of a perceived political opinion is the simple fact of the Applicant's arrest and accusation of being linked with militants. The Applicant made no effort, nor offered any evidence, to establish on a balance of probabilities that this was a perceived political belief. I find the Applicant's position problematic for two reasons.

[26] First, the RAD was faced with the RPD's decision, which concluded at paragraph 8:

While the Punjab police did threaten that they could implicate the claimant as being associated with militants, they were not stating this because they believed the claimant was actually involved with militants. They were making this threat because they were working in cooperation with Sohan Ram and Chopra and were trying to pressure the claimant into giving up his land to Sohan Ram and Chopra. There is thus no evidence to link this dispute to a

Convention ground and this claim will be assessed under subsection 97(1) of the Act.

[Emphasis added].

[27] Based on the record before the RAD, they found that the only reason the alleged agents of persecution were interested in the Applicant was to force him to sell his land. While the Applicant and the evidence surrounding his arrest were found to be credible, they were credible insofar as he was indeed arrested and accused of links with militants. It was the Applicant's own evidence that also identified that the police knew he was not in fact, linked with militants but that this arrest and accusation were fabricated to extort him into selling his land. To that end, the Applicant submits that the police's awareness that the accusations are false "does not mean the police could not be motivated by his perceived political opinion and does not alleviate the risk that the police would continue to pursue these allegations." I disagree. By the fact that the police are aware the accusations are false, and the Applicant's evidence makes clear that these accusations are an effort to extort him into selling his land, whether or not the police continue to pursue these allegations is irrelevant to the fact that these allegations do not have a nexus to a Convention ground. The alleged persecution is grounded in the extortion effort and not a perception of the Applicant's political opinion. It cannot therefore, be credibly argued that it was unreasonable for the RAD to not consider that the Applicant would be at risk from an imputed political opinion when it has been found as an undisputed and reasonable fact that the alleged agents of persecution do not believe the Applicant has such a political opinion.

[28] Second, as my colleague Justice Norris similarly encountered in *Khair*, and irrespective of the first reason, the Applicant has made clear that the reason he refuses to sell his home/land is

because he feels attached to the property because of his deceased mother and that being asked to sell same would be “like selling our mother”. For the same reason as Justice Norris, I find that the Applicant’s “link” to a political opinion being imputed by selling his home/land was never drawn in the Applicant’s submissions to the RAD. Similarly, I cannot find the RAD’s Decision unreasonable in this respect for failing to consider an argument that was only advanced to the RPD but not to the RAD, regardless of whether the RPD made a finding on that argument, “and for which there is little, if any, support in the record” (*Khair* at para 48).

[29] Before this Court, there is still nothing in the record to suggest there is any imputed political opinion in the mind of any would-be persecutor that would give the Applicant’s claim a nexus to the Convention ground of a perceived political belief. The Applicant’s argument that the RAD erred in finding that there was no nexus to a Convention ground is engrained in their unfounded insistence that there was such a nexus. Unfortunately, for most applicants, their “say-so” is insufficient to substantiate such a claim.

[30] For these reasons, the Decision was not unreasonable.

## VI. Conclusion

[31] This application is dismissed. There are no questions for certification.

**JUDGMENT in IMM-7110-23**

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

1. This application for judicial review is dismissed; and
2. No question of general importance is certified.

"Ekaterina Tsimberis"

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Judge

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

**DOCKET:** IMM-7110-23

**STYLE OF CAUSE:** ANIL KUMAR v THE MINISTER OF CITIZENSHIP  
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**PLACE OF HEARING:** MONTRÉAL, QUEBEC

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