

Federal Court



Cour fédérale

**Date: 20230412**

**Docket: IMM-3572-22**

**Citation: 2023 FC 521**

**Ottawa, Ontario, April 12, 2023**

**PRESENT: The Honourable Mr. Justice Pamel**

**BETWEEN:**

**JUNGVIR SINGH KAINTH**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Jungvir Singh Kainth, is a 31-year-old citizen of India whose claim for refugee protection was rejected by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada on September 15, 2021, a determination that was confirmed on appeal, though for different reasons, by the Refugee Appeal Division [RAD] on March 7, 2022; the determinative issue before the RAD was the existence of a viable internal flight alternative [IFA] for Mr. Kainth in New Delhi.

[2] Mr. Kainth claims to fear the Punjab police, the Congress Party, and the Bharatiya Janata Party [BJP] if he were to return to India. In February 2017, during the Legislative Assembly elections for the state of Punjab, the applicant worked as a member of the Shiromani Akali Dal Badal [SAD-B] political party, campaigning for his party's candidate and against the Congress Party's candidate for the applicant's constituency in Khanna, Punjab. Mr. Kainth was very vocal against the Congress Party, including by accusing it of committing acts of genocidal violence against Sikhs in 1984. Despite his efforts, the Congress Party candidate won the election.

[3] Soon thereafter, Mr. Kainth began receiving threatening telephone calls. In November 2017, Mr. Kainth was confronted by four men in a Jeep, who stopped their vehicle in front of him, got out, and started beating him, telling him that it was time that he paid for his actions. The local police were of little help, not wanting to investigate the Congress Party, which was now in power. Mr. Kainth travelled to Canada on a visitor visa in February 2018, but returned to India in July 2018, hoping that matters had calmed down. According to Mr. Kainth, they had not, and in September 2018, Mr. Kainth again began receiving threatening telephone calls – he was supposedly advised that the Congress Party could not believe that he had returned to India and that the party was not finished with him. Mr. Kainth was arrested by Punjab police in October 2018 and held for two days and two nights, during which time he was beaten and tortured; he was released only after his father paid the police a large bribe (between 100,000 and 200,000 Indian rupees). Before Mr. Kainth was released, the police took his biometric information and told him that he should do whatever the Congress Party wanted of him.

[4] Mr. Kainth returned to Canada in December 2018 and filed a claim for refugee protection. The RPD found that he was not credible as to the basis of his claim. The RAD found that the RPD had erred in its analysis of Mr. Kainth's credibility; however, it determined that Mr. Kainth had a viable IFA in New Delhi.

[5] Under the first prong of the IFA test, which was established in *Rasaratnam v Canada (Minister of Employment and Immigration) (CA)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration) (CA)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589, the RAD found that Mr. Kainth's risk was local in nature and that he had not established that the local police and the Congress Party in Punjab had the means or the motivation to locate him in the proposed IFA. On the basis of the country conditions evidence in the National Documentation Package [NDP] for India, the RAD determined that Mr. Kainth had not established that there was a serious possibility that the Congress Party, operating in tandem with Punjab police from his village, could locate him in New Delhi through the mandatory tenant verification process used in that city or the Crime and Criminal Tracking Network and Systems [CCTNS]. The RAD noted that there was no evidence that the Congress Party had attempted to locate Mr. Kainth after December 2018.

[6] Before the RAD, Mr. Kainth also submitted that after the national BJP government's passing of three laws related to farmers in September 2020, which resulted in massive protests in New Delhi [Farmers' Protests], he participated in rallies in Canada organized in solidarity with the Farmers' Protests, giving a speech at one of the protests. The RAD found that Mr. Kainth's profile was not such that the BJP would persecute him for his overseas and online support of the

Farmers' Protests, particularly given that the controversial laws were repealed in November 2021 and that the protests were declared over in December 2021.

[7] Under the second prong of the IFA test, the RAD found that Mr. Kainth had not established that his relocation to New Delhi would be objectively unreasonable.

I. Analysis

[8] As a preliminary matter, Mr. Kainth proposes to amend the style of cause to reflect the Minister of Citizenship and Immigration as the correct respondent. With no objection on the part of the Minister, I will so order. Also, there is consensus that the merits of the RAD's IFA analysis are reviewed on a reasonableness standard (*Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62 at para 6; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 459 at para 11).

[9] At the hearing before me, Mr. Kainth argued that where agents of persecution are state agents, clear evidence of a claimant's safety in a proposed IFA should be required before an IFA is found to be viable. He further argued that the presence of his family members roughly 285 km from the proposed IFA could render it unsafe or force him to cut himself off from his family. As Mr. Kainth conceded before me, these issues were not raised before the RPD or the RAD; I will therefore not consider them on judicial review.

[10] The remainder of Mr. Kainth's submissions on judicial review focus on the RAD's findings regarding the means and the motivation of the Punjab police and the Congress Party to

locate him in New Delhi. He argues that the RAD erred in finding, based on evidence in the NDP, that New Delhi's mandatory tenant verification system is a very weak or impossible tool for tracking a person on account of institutional slackness, weak capacity, and varying levels of professionalism. He submits that the RAD overlooked contrary evidence in the NDP indicating that in 2019, as many as 65,163 tenants in New Delhi were checked, more than more than 26,000 tenants were verified and 20,198 forms filled [out] for verification, and police in New Delhi have charged or convicted landlords for not following tenant verification requirements. Further, with regard to the article indicating that the tenant verification system is a very weak or impossible tracking tool, Mr. Kainth argues that the RAD overlooked a statement from the same document indicating that corroborating information for this claim could not be found. Mr. Kainth submits that under the tenant verification laws in place in New Delhi, New Delhi police will need to make an inquiry with the Punjab police in his hometown, and the local Punjab police who detained him will recognize his name and disclose his whereabouts to his agents of persecution in the Congress Party.

[11] I am not persuaded by Mr. Kainth's arguments. As the RAD acknowledged, the objective evidence around the efficacy of the CCTNS and the tenant verification system is mixed. The RAD's findings regarding the efficacy of the tenant verification system are explicitly prefaced by the phrase "[d]espite some evidence to the contrary". The RAD is presumed to have considered all the evidence, and Mr. Kainth has not satisfied me that the RAD overlooked any evidence pointing to conclusions contrary to its findings (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 14-17; *Amadi v Canada (Citizenship and Immigration)*, 2019 FC 1166 at paras 50, 52). Moreover, the RAD's analysis of

the tenant verification system and the CCTNS was supported by its finding that Mr. Kainth had not established that the local Punjab police in his hometown had any continued interest in looking for him.

[12] On the whole, the RAD considered this evidence and found that it did not establish that these systems would allow Mr. Kainth's agents of persecution to locate him in New Delhi. It is not for the Court to reweigh that evidence where Mr. Kainth has not established that the RAD disregarded any material, contrary evidence. Mr. Kainth bore the burden of establishing that the proposed IFA was unreasonable; I find nothing unreasonable in the RAD's analysis of the means and the motivation of the agents of persecution to locate him in the proposed IFA. The application for judicial review must therefore be dismissed.

**JUDGMENT in IMM-3572-22**

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

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct respondent.
2. The application for judicial review is otherwise dismissed.
3. There are no questions for certification.

"Peter G. Pamel"

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Judge

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

**DOCKET:** IMM-3572-22

**STYLE OF CAUSE:** JUNGVIR SINGH KAINTH v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** MARCH 29, 2023

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** APRIL 12, 2023

**APPEARANCES:**

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Aminollah Sabzevari FOR THE RESPONDENT

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