

Federal Court



Cour fédérale

Date: 20231215

Docket: IMM-11601-22

Citation: 2023 FC 1712

Ottawa, Ontario, December 15, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

NARINDER SINGH KAILEY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Narinder Singh Kailey, seeks judicial review of the decision of the Refugee Appeal Division (RAD) dismissing his appeal and affirming the decision of the Refugee Protection Division (RPD).

[2] The Applicant is a citizen of India, who claimed refugee status in Canada because he fears persecution by the family of his ex-girlfriend, and the police who are acting under pressure from the family. He says that his ex-girlfriend's family is rich and powerful, with political

connections and influence. When the family discovered their relationship, the Applicant claims to have been threatened and beaten by goons sent by his ex-girlfriend's family, and then falsely arrested and subjected to beatings at the hands of the police. After this he fled to Canada and made a refugee claim.

[3] The RPD had some credibility concerns with the Applicant's evidence, but ultimately dismissed his claim because it found that he had an internal flight alternative [IFA] in Mumbai or Delhi. The RAD upheld this determination.

[4] The determinative issue in this case is whether the RAD's finding that the Applicant had an IFA is reasonable, in light of the evidence in the record.

[5] The Applicant's arguments focus on the RAD's assessment of the evidence. First, he says the RAD completely ignored the fact that he is a famous singer, and so would be easily recognized and discovered in the IFA locations. Next, the Applicant claims that the RAD failed to assess all of the relevant evidence and to make an independent assessment. Finally, he submits that the RAD engaged in speculation when it found that he would not face any future harm upon a return to India in the IFA locations.

[6] Applying the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, I find the decision to be reasonable. The Applicant has not persuaded me that there is any flaw in the decision that is sufficiently serious and central to make it unreasonable (*Vavilov* at para 100).

[7] There are two problems with the Applicant's argument that the RAD failed to consider his argument that he is a famous singer and so well-known that he will easily be recognized in the IFA locations. The first problem is that he did not make this argument in his submissions to the RAD, and the RAD cannot be faulted for failing to consider an argument that was never presented to it. Second, I am not persuaded that the evidence in the record supports the Applicant's argument. The RAD accepted that he is a professional singer, but the evidence did not demonstrate that he is so widely known that he would be recognized by the public throughout India.

[8] Next the Applicant submits that the RAD failed to consider all of the evidence, and in particular that the core of his claim is a fear that he will be subject to what is referred to as an "honour killing". Related to this, the Applicant argues that the RAD erred by focusing its risk analysis on the police rather than also considering that the ex-girlfriend's family had hired goons to assault him.

[9] I am not persuaded. The RAD discussed the evidence about the reaction of the ex-girlfriend's family, and understood that they were opposed to their relationship. Indeed, the RAD did not question the Applicant's claim that the attacks by the goons and arrest and mistreatment by the police occurred at the urging of the family. The Applicant was unable to point to specific evidence that he says was ignored by the RAD, and beyond that his argument amounts to a request that I re-weigh the evidence. That is not the role of a reviewing court.

[10] The Applicant's argument that the RAD erred by focusing on the risks posed by the police rather than also assessing the risks from hired goons also cannot succeed. The submissions presented to the RAD focused on the risk that the police would track down the Applicant in the IFA locations using the Crime and Criminal Network Tracking System or the tenant verification registry. That is what the RAD examined. It acknowledged and accepted that the Applicant had been physically attacked by goons, and did not question the Applicant's assertion that the assailants were sent by the ex-girlfriend's family. However, the Applicant presented no evidence that the family would hire thugs to track him down in other parts of the country, or that they had the means to do that. The RAD's focus on the risks from the police is not unreasonable.

[11] Finally, the Applicant contends that the RAD engaged in speculation regarding his risk of future harm. The first thing to note about this submission is that any prediction of future risk involves a degree of prediction. The allegation that the RAD speculated suggests that its prediction was not based on the evidence. This argument cannot succeed. The RAD's decision is detailed and thorough, and reflects its engagement with the evidence and submissions submitted by the Applicant.

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

[13] There is no question of general importance for certification.

JUDGMENT in IMM-11601-22

THIS COURT'S JUDGMENT is that:

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

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11601-22

STYLE OF CAUSE: NARINDER SINGH KAILEY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 13, 2023

**REASONS FOR JUDGMENT
AND JUDGMENT:** PENTNEY J.

DATED: DECEMBER 15, 2023

APPEARANCES:

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