

Federal Court



Cour fédérale

Date: 20240118

Docket: IMM-12323-22

Citation: 2024 FC 80

Montréal, Quebec, January 18, 2024

PRESENT: Mr. Justice Sébastien Grammond

Docket: IMM-12323-22

BETWEEN:

**GURPREET SINGH
SIMRAN JEET KAUR**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Singh and Ms. Kaur, who are citizens of India, claimed refugee status. They alleged that they are from different castes and that, in 2017, they eloped against the will of Ms. Kaur's family and his former fiancé. They say that because of their marriage, Ms. Kaur's family and the ex-fiancé have threatened Mr. Singh's family. Moreover, when they returned to their hometown

in 2018, Mr. Singh was detained and tortured by the police. He was later released upon paying a bribe.

[2] The Refugee Protection Division [RPD] and Refugee Appeal Division [RAD] of the Immigration and Refugee Board dismissed their claims, because they had an internal flight alternative [IFA] in Mumbai or New Delhi. The RAD concluded that neither Ms. Kaur's family, the ex-fiancé and the police of the state of Haryana have the motivation or means to harm them in Mumbai or New Delhi.

[3] Mr. Singh and Ms. Kaur are now seeking judicial review of the RAD's decision. On judicial review, my role is not to reweigh the evidence or to decide the case afresh. Rather, I can only intervene with respect to factual determinations if the RAD "has fundamentally misapprehended or failed to account for the evidence before it": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 126, [2019] 4 SCR 653.

[4] Based on *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93, *AB v Canada (Citizenship and Immigration)*, 2020 FC 915, and *Huerta v Canada (Minister of Citizenship and Immigration)*, 2008 FC 586, Mr. Singh and Ms. Kaur first argue that an IFA does not exist where family members would have to mislead the agents of persecution regarding the applicants' whereabouts or, in other words, that there is no IFA if the applicants need to withhold their contact information from their own family and effectively go into hiding. As my colleague Justice Denis Gascon explained in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1715 at paragraphs 47–48, however, the holdings in these cases are fact-specific and there was

evidence of serious threats against family members. They do not establish a legal presumption that no IFA exists where the agents of persecution have harassed family members. See also *Shakil Ali v Canada (Citizenship and Immigration)*, 2023 FC 156. In this case, given the evidence, it was reasonable for the RAD to find that Mr. Singh's father or uncle would not put themselves at risk if they refuse to disclose the applicants' whereabouts.

[5] Mr. Singh and Ms. Kaur also challenge the RAD's finding that they would not be at risk outside the state of Haryana, in New Delhi or Mumbai. They argue that the RAD based its finding exclusively on the fact that the agents of persecution have not sought them outside the state of Haryana and disregarded the fact that family members were harassed, that the risk pertains to an honour killing and that the police have accused them of terrorism.

[6] The RAD, however, did not disregard these facts. It acknowledged that there is evidence of honour killings in India, but found the threat against Mr. Singh and Ms. Kaur to be localized. It also found that the police would not have released Mr. Singh if they really believed he was engaged in terrorism. Thus, the arrest was likely unlawful and not documented in police databases, and the Haryana police is unlikely to make efforts to find Mr. Singh and Ms. Kaur in a different state. The RAD also considered all the instances in which Mr. Singh's father and uncle were contacted by the agents of persecution. All the alleged incidents took place in the applicants' hometown in Haryana. There is only one exception, namely that Mr. Singh's uncle received one visit from the police in a town located about 50 km from the applicants' hometown, still in the state of Haryana.

[7] While they may disagree with the RAD's findings, Mr. Singh and Ms. Kaur have not shown that the RAD fundamentally misapprehended the evidence or failed to account for it.

[8] Lastly, Mr. Singh and Ms. Kaur take issue with the RAD's reference to *Enweliku v Canada (Citizenship and Immigration)*, 2022 FC 228, for the proposition that "family members who have protected a claimant's location would continue to do so." In my view, there is nothing unreasonable in this reference. The important point is that the evidence sustained the RAD's conclusion that Mr. Singh's father and uncle were not at risk of being harmed and that there was no reason to believe that they would be forced to reveal Mr. Singh's and Ms. Kaur's whereabouts in the IFA.

[9] For these reasons, Mr. Singh's and Ms. Kaur's application for judicial review will be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12323-22

STYLE OF CAUSE: GURPREET SINGH, SIMRAN JEET KAUR v
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: GRAMMOND J.

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