

Federal Court



Cour fédérale

Date: 20240605

Docket: IMM-2233-23

Citation: 2024 FC 852

Toronto, Ontario, June 5, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

**AMANDEEP SINGH ARORA
SRISTHI KAUR
AMANPREET KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicants, Amandeep Singh Arora [Principal Applicant], his wife [Associate Applicant], and their child [Minor Applicant], seek judicial review of a decision by the Refugee Appeal Division [RAD] refusing their claim for refugee protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] I am dismissing the application because the RAD reasonably assessed the viability of an internal flight alternative [IFA] for the Applicants in Mumbai and New Delhi.

II. Background

[3] The Applicants, citizens of India, entered Canada in 2019 and made a claim for refugee protection based on their fear of harm from the Punjab police over their alleged links to the Khalistani movement.

[4] The Applicants alleged that they were persecuted because of the Principal Applicant's association with his friend, BS, a member of the Shiromani Akali Dal Mann Party. The Principal Applicant had supported BS by giving BS's landlord a guarantee and by paying his rent. In June 2019, the Principal Applicant escorted the police to BS's room, where they found pro-Khalistan posters and pamphlets. Linking the Principal Applicant with BS, the police arrested and detained the Principal Applicant. He was released after his father paid a bribe, with the condition that he report back to the police when asked and that he turn BS in.

[5] The Principal Applicant was arrested again by the police in July 2019, who questioned him about BS's whereabouts. He thereafter fled to Canada in August 2019. He alleges that the police went to his home in August 2019 and in September 2019 looking for him and threatened to arrest the Associate Applicant because of his failure to comply with the police conditions. The Associate Applicant and the Minor Applicant then fled to Canada.

[6] The Refugee Protection Division [RPD] rejected their claim on August 25, 2022, finding that the Applicants had an IFA in Mumbai and New Delhi, and that the Minor Applicant did not have a well-founded fear of persecution. By decision dated February 3, 2023, the RAD upheld the RPD's decision.

III. Analysis

[7] The Applicants challenge the RAD's determination that they have viable IFA's. In particular, they allege that the RAD erred in: (i) finding that the Punjab police were not motivated to locate the Applicants; and (ii) failing to assess the evidence from the National Documentation Package [NDP] on the means of the Punjab police to track the Applicants. There is no dispute that the applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

A. *The two-pronged IFA test*

[8] A two-pronged test is applicable to determining the viability of an IFA. The first prong considers whether a claimant would be subject to a serious possibility of persecution under section 96 or to a risk of harm under subsection 97(1) of the *IRPA* in the proposed IFA. Under this prong, the agent of persecution's "means" and "motivation" to locate the claimant in the proposed IFA are considered: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8 [Singh]; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21 [Adeleye].

[9] The second prong assesses whether it would be reasonable, in all the circumstances, to expect the claimant to seek safety in the IFA: *Singh* at para 10; *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 8 [*Olusola*].

[10] Once an IFA is proposed, the onus is on the claimant to prove that they do not have a viable IFA: *Adeleye* at para 20; *Olusola* at para 9.

B. *The RAD's decision is reasonable*

(1) The RAD did not err in finding a lack of motivation

[11] In this case, the determinative issue for the RAD was that the Applicants had failed to establish that the Punjab police had the motivation to track them in either of the proposed IFAs. The Applicants argue that the RAD unreasonably based this lack of motivation on a finding that, on a balance of probabilities, the Punjab police's arrest of the Principal Applicant in June 2019 was "extra-judicial" or without lawful authority: RAD Reasons and Decision dated February 3, 2023 at para 21 [RAD Reasons].

[12] In my view, the RAD's decision is wholly reasonable and falls within the range of acceptable outcomes open to it based on the evidentiary record: *Vavilov* at para 86. As set out below, the RAD's determination on the lack of motivation was based on its assessment and weighing of the evidence. It is not for this Court sitting in review to reassess and reweigh the evidence before the RAD: *Vavilov* at para 125.

[13] According to the Principal Applicant, he was taken to the police station where he was questioned and tortured, photographed, fingerprinted, and made to sign blank sheets of paper: RAD Reasons at para 22. However, the Principal Applicant was never formally charged with anything, no First Information Report, arrest warrant, order, or summons was ever filed against him, and he was never presented before a magistrate or a medical officer: RAD Reasons at para 23. In the RAD's estimation, this was significant because it supported that the Principal Applicant's arrest and detention were contrary to Indian law. The objective evidence in the NDP is that Indian law prescribes protocols and procedures that must be followed: RAD Reasons at para 25.

[14] While the Applicants agree that the relevant protocols and procedures were not followed, they nonetheless assert that the Principal Applicant's arrest may have been entered in the local police station diary and registered in a national database. They take issue with the RAD's conclusion that based on the extra-judicial arrest and the failure to follow the legal protocols, it was more likely than not that the Principal Applicant's name was not registered in any database. However, I find that the RAD's reasoning on this issue is both coherent and rational: *Vavilov* at para 86.

[15] Furthermore, while the Applicants seized on the RAD's reasoning about the extra-judicial arrest, the RAD's determination about a lack of motivation was based on other significant findings, all supported by the evidentiary record. These include:

- (i) The Punjab police did not identify the Applicants as suspects in a case of major or high profile organized crimes, such that they would communicate or coordinate with the other police in the IFA locations: RAD Reasons at paras 27-28;

(ii) There is no evidence that local police in India, including the Punjab police, track and pursue people throughout India because of a failure to comply with conditions imposed without lawful authority: RAD Reasons at para 30;

(iii) While evidence shows Sikhs who openly advocate for Khalistan may face a risk of police harassment outside Punjab, the Principal Applicant contrastingly does not openly advocate for Khalistan. This means that there is no more than a mere possibility that police in the IFA locations would learn of the Principal Applicant's imputed political opinion: RAD Reasons at para 32;

(iv) There is no evidence that the Principal Applicant has challenged the police publicly or complained about them, so as to motivate the police to track him in the IFA locations: RAD Reasons at para 37; and

(v) There is no evidence that there are serious allegations levied against the Principal Applicant, or an involvement of the national police: RAD Reasons at para 38.

[16] Finally, I do not accept the Applicants' argument that the RAD ignored their testimony about the police visits to their home and inquiries about their whereabouts after they left India. The RAD expressly acknowledged this testimony: RAD Reasons at para 22. In my view, this does not undermine the RAD's overall conclusion that there was insufficient evidence that the Punjab police would be motivated to track the Applicants outside their hometown. This is not a case where the RAD unreasonably ignored evidence of the police seeking an applicant outside their jurisdiction and in the IFA location itself: *Patel v Canada (Citizenship and Immigration)*, 2024 FC 711 at para 22.

(2) The RAD did not err in failing to consider the means of the Punjab police

[17] The Applicants argue that the RAD further erred in failing to assess the NDP documentation concerning the available tracking and identification systems in India. They argue

that the police have not only the motivation to locate the Applicants in the proposed IFA's, but have the means to do so as well.

[18] However, given the RAD's conclusion that the Punjab police's lack of motivation was dispositive, there was no need for it to proceed and further address their means to locate the Applicants in the proposed IFA's: RAD Reasons at para 19. I find no reviewable error in this approach.

IV. Conclusion

[19] A review of the RAD's decision demonstrates a thorough analysis of the issues raised. Ultimately, after assessing and weighing the evidence, the RAD concluded that the Punjab police do not have the motivation to track the Applicants in the proposed IFA's of either Mumbai or New Delhi. The application is therefore dismissed.

[20] The parties did not raise a question for certification and I agree that none arises in this case.

JUDGMENT in IMM-2233-23

THIS COURT'S JUDGMENT is that:

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

"Anne M. Turley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2233-23

STYLE OF CAUSE: AMANDEEP SINGH ARORA, SRISTHI KAUR,
AMANPREET KAUR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 4, 2024

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

DATED: JUNE 5, 2024

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