

Federal Court



Cour fédérale

Date: 20240809

Docket: IMM-9074-23

Citation: 2024 FC 1246

Toronto, Ontario, August 9, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

GURBINDER SINGH UPPAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a dismissal of the Applicant's appeal by the Refugee Appeal Division [RAD]. The issue is whether the RAD made a reasonable decision when it found that an Internal Flight Alternative [IFA] exists for the Applicant in India.

[2] For the reasons below, I find the RAD's decision to be reasonable, and the application for judicial review is dismissed.

II. Background

[3] The Applicant is an Indian citizen from Punjab. According to his Basis of Claim [BOC] form narrative, the Applicant was involved in local politics and supported the Akali Dal Badal party. In June 2013, he supported the campaign of one of his friends against Sapranch Pritpal Singh [PS]. PS won but resented the Applicant for not supporting him. The BOC narrative also states that during the 2017 elections, the Applicant got involved to support the Akali Dal Badal candidate again and PS started threatening him and sent the police after him. The BOC states that “[o]n [PS’s] advice the police started to link [the Applicant] with the gangsters and drug dealers.”

[4] In 2017, the Applicant travelled to Canada to visit family. He alleges that when he returned to India, the police questioned him about his trip and accused him of going to Canada to collect funds for militant activities. They eventually released him; however he states that the police came back on January 2, 2018, beat him, arrested him and tortured him, and that they only released him after “influential people” from his village paid a substantial bribe. He alleges that the police took his fingerprints, picture and signature “on blank paper” and asked him to report to the station every month. After being released, he was on bed rest and the police visited him twice. Once he was better, he moved to Delhi and then left for Canada.

[5] The Applicant left India and arrived in Canada on February 7, 2018. He first applied for an extension of his visitor status and submitted a claim for refugee protection in May 2019.

[6] In a decision dated January 31, 2023, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada rejected the Applicant’s claim, raising several issues with the credibility of his evidence and noting that, even if these findings were not determinative,

the Applicant had re-availed to India in 2017 and not provided a reasonable explanation for this fact.

[7] The Applicant appealed that decision. In his submissions to the RAD, he argued that issues with the interpretation at the RPD's hearing led to an unjustified and flawed decision, that the RPD had failed to take into account his mental state when he had filed his claim for refugee protection, that the RPD had erred in not accepting his explanations for inconsistencies and discarding his corroborating evidence, and that the RPD's conclusion on reavilment was unreasonable and inconsistent with the record. He submitted new evidence to the RAD, namely a partial transcript with alternative translations made from the recording to illustrate the alleged interpretation issues, and articles from online sources.

[8] On May 26, 2023, the RAD sent the Applicant and the Minister a notice that it would consider a new issue on appeal, namely the existence of IFAs in Delhi, Mumbai and Bangalore.

[9] The Applicant's counsel sent written submissions on June 8, 2023. The submissions highlighted the existence of an active "Proclaimed Offender (PO) Arrest Warrant" [PO warrant] against the Applicant (according to his own testimony), the possibility for the police to find the Applicant through the Tenant Verification System [TVS], the Crime and Criminal Tracking Network [CCTNS], the use of surveillance and facial detection technology, or through his family. The submissions also raised various elements showing the difficulties to relocate to a different Indian state, in particular for people coming from rural areas and for Punjabi speakers.

[10] The RAD dismissed the appeal in a decision dated June 23, 2023. This is the decision under review.

III. The RAD decision

[11] The RAD found the determinative issue to be the existence of an IFA. The test for an IFA requires first that there is no well-founded fear of persecution in the proposed IFA, and second that it is reasonable in all the circumstances that a refugee claimant relocate there: *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)* [1994] 1 FC 589 (C.A.).

[12] On the first prong of the test, the RAD found the IFA would be safe in the proposed IFAs because the agents of persecution would not be motivated to pursue the Applicant there. The RAD found there was insufficient evidence to conclude PS would have an ongoing interest in the Applicant, and that even though the police could be motivated to find persons in cases of major crimes, the Applicant had not shown he would fit this profile. In particular, the RAD noted that “the police’s interest in the [Applicant] was at the behest of PS due to a grudge rather than the police being personally interested in pursuing him for any genuine concerns of criminality or militancy.” The RAD also found the existence of a PO warrant was not established with any credible or reliable evidence.

[13] The RAD also found the agents of persecution would not have the means to find the Applicant in the proposed IFAs. It considered whether PS could find him through the police. It considered the TVS and CCTNS but noted it was not established the Applicant could be found in the CCTNS, as he himself had testified his lawyer could not find official documentation of his arrest. It also noted the evidence regarding the implementation of the TVS was mixed, with some evidence suggesting low utilisation of this system. The RAD also considered facial recognition technology, but noted the Applicant had not established that his identification information was available to the police in the IFAs. It considered the possibility of the Applicant being arrested at

the airport on arrival, but found it was unlikely in light of the objective evidence, which stated this behaviour only targeted people accused of crimes or who cannot prove they are Indian citizens, none of which matched the Applicant's profile. Finally, the RAD considered the possibility the Applicant could be tracked through family and friends but noted the Applicant had not submitted evidence that the police were searching for him in this manner.

[14] On the second prong of the test, the RAD acknowledged that the Applicant would face challenges in relocating but found none of these challenges met the level of undue hardship. It noted the Applicant only submitted general information regarding the proposed IFAs, without linking the information to his particular circumstances. It considered the Applicant's status, resources, religion, political opinion, and education, and found the objective evidence did not support the Applicant would face undue hardship.

[15] The RAD therefore found the Applicant had not established he was a Convention refugee or a person in need of protection and dismissed the appeal.

IV. Issue

[16] I agree with the parties that the sole issue is whether the decision is reasonable pursuant to the description of this legal standard by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

V. Analysis

[17] I agree with the Respondent that the RAD's decision is reasonable.

A. *Motivation of the police*

[18] The Applicant alleges that the RAD's decision was unreasonable because it failed to recognize that the police developed a free-standing motivation to pursue him which was not related to PS. He states that the Punjab police interest in him "transitioned and escalated from a personal grudge to genuine police interest."

[19] I do not find this argument convincing in light of the record. The Respondent identified several parts of the Applicant's testimony in which he stated that the police knew the allegations were false, and they were only pursuing him because of PS.

[20] Counsel for the Applicant urged me to consider the severity of the police mistreatment of the Applicant as an indication of their genuine interest in him, which was unrelated to PS. However, this was an argument for the RAD and not for this Court to consider. There is no indication that this argument was made by the Applicant to the RAD by the counsel who represented him at that time. Therefore, I cannot find the RAD unreasonable in failing to consider it.

[21] Based on the evidence before it, the RAD could reasonably find that the police would not be motivated to find the Applicant in the proposed IFAs.

B. *Means of the police to pursue the Applicant*

[22] Regarding the means or capacity of the police to pursue the Applicant, I do not think the RAD ignored evidence which contradicted its findings. The RAD, like the Applicant, noted that the objective evidence on the TVS and CCTNS was mixed. The evidence does not directly contradict the RAD's finding of a low risk of the Applicant being tracked. On balance, it states that while some "tech-savvy" police officers use the CCTNS to record information on persons of

interest, it is not a general practice. It was the responsibility of the RAD and not this Court to draw conclusions from this evidence.

[23] Further, I agree with the Respondent that the Applicant's allegation that there could be a record because the police took his prints and other information is speculative. The RAD found that the detention of the Applicant was extra-judicial and therefore no records would exist. It noted that the Applicant's Indian lawyer had not been able to find an official record, and the record in front of the RAD contained no evidence of any other kind of record. In these circumstances, it was reasonable for the RAD to find that no record exists.

VI. Conclusion

[24] For the reasons above, the application is dismissed. The Applicants do not identify shortcomings in the RAD's decision that render it unreasonable.

JUDGMENT in IMM-9074-23

THIS COURT'S JUDGMENT is that:

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

“Michael Battista”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9074-23

STYLE OF CAUSE: GURBINDER SINGH UPPAL v THE
MINISTER OF CITIZENSHIP AND
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PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 25, 2024

JUDGMENT AND REASONS: BATTISTA J.

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