Federal Court  Cour fédérale

Date: 20240923

Docket: IMM-7680-23

Citation: 2024 FC 1483

Montreal, Quebec, September 23, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

AMRIK SINGH
SARGUNJOT SINGH
PRITPAL KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal applicant, Amrik Singh, accompanied by his wife Pritpal Kaur and their son Sargunjot Singh [together, the Singh family], are seeking judicial review of a decision dated June 1, 2023 [Decision] whereby the Refugee Appeal Division [RAD] dismissed their appeal and confirmed the Refugee Protection Division's [RPD] decision. The Singh family's claim for

refugee protection under both sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] was rejected because the RAD identified viable internal flight alternatives [IFA] in New Delhi, Mumbai, and Faridabad, all cities located in their country of citizenship, India.

[2] The Singh family submit that the RAD erred in its determination of viable IFAs by improperly considering various facts of their claim and the documentary evidence in its analysis of the second prong of the IFA test. The only issue to be determined in this judicial review is whether the RAD's Decision is reasonable.

[3] For the reasons that follow, the Singh family's application for judicial review will be dismissed. Further to my assessment, I find that the RAD's Decision was responsive to the evidence and that its findings regarding the reasonableness of the IFA locations in New Delhi, Mumbai, and Faridabad have the qualities that make the RAD's reasoning logical and consistent in relation to the relevant legal and factual constraints. The Singh family simply failed to discharge their onus to convince the RAD that the IFAs were not viable.

II. Background

A. *The factual context*

[4] In India, the Singh family lived in a small village located in the state of Punjab. Mr. Singh worked as a farmer while his wife was a homemaker.

[5] The Singh family's refugee claim was principally based on their fear of persecution at the hands of the Punjab police, as Mr. Singh alleged he had been accused of vehicle theft and of being a Sikh militant.

[6] On October 10, 2017, the Punjab police inspected a vehicle abandoned at Mr. Singh's farm. After questioning Mr. Singh on the vehicle, the police seized the vehicle and left.

[7] The next day, an unidentified person approached Mr. Singh and asked about the vehicle they had parked on his farm. The police then arrived and arrested both the unknown person and Mr. Singh for vehicle theft.

[8] On October 14, 2017, the police released Mr. Singh further to the intervention of influential people from his village and the payment of a bribe. The police made his release subject to certain conditions, including the requirement that he report to them monthly.

[9] On November 1, 2017, Mr. Singh reported to the police and was questioned about other people involved in vehicle thefts.

[10] On November 26, 2017, in reaction to his previous questioning by the police, Mr. Singh decided to move to a city located in the neighbouring state of Haryana.

[11] A few days later, the police visited Mr. Singh's village to inquire about his location. Mr. Singh then made the decision to leave India and travelled to New Delhi on December 15,

2017, where his wife and son joined him. The Singh family remained in New Delhi until they fled to Canada in July 2018. The family applied for refugee protection the following month.

[12] While in Canada, the Singh family took part in certain events relating to the creation of an independent state of Khalistan in India, namely by registering to vote on a referendum for the establishment of Khalistan. The Khalistan movement is a separatist movement seeking to create a homeland for Sikhs by establishing an ethno-religious sovereign state called Khalistan in the Punjab region.

[13] On June 24, 2022, the RPD rejected the Singh family's claim as it found that viable IFAs existed for them in New Delhi, Mumbai, and Faridabad.

B. *The RAD's Decision*

[14] The Singh family appealed the RPD's decision to the RAD, arguing that the RPD erred in its IFA analysis. No new evidence was submitted on appeal.

[15] The RAD conducted its own IFA analysis and dismissed the appeal. It determined that the RPD was correct in finding that valid IFAs exist for the Singh family in New Delhi, Mumbai, and Faridabad.

[16] Regarding the first prong of the IFA test, the RAD found that the Singh family were not subject to any serious possibility of persecution or likely risk of harm in the IFA locations on any of the four grounds they had raised. The Singh family had alleged risks of persecution (i) by the

Punjab police due to Mr. Singh's alleged involvement in vehicle thefts; (ii) as advocates for a Khalistan state; (iii) because of their Sikh religion; or (iv) on account of Ms. Kaur's gender.

[17] However, the present application for judicial review solely concerns the RAD's findings regarding the Singh family's support for the Khalistan movement. As a result, this summary of the RAD's findings under the first prong will only cover those relating to the Singh family's fear of persecution or harm for their pro-Khalistan beliefs.

[18] In its analysis of the first prong of the IFA test, the RAD found insufficient evidence that the Singh family's activities in Canada demonstrate that they have been active supporters of the Khalistan movement. The RAD noted that Mr. Singh testified that he participated in a few events for the Khalistan movement and that he registered to vote on a referendum for a Khalistan state. There was no other evidence that Mr. Singh has been a vocal supporter of the Khalistan movement since he arrived in Canada, either at events in Canada or on social media. The RAD also determined that apart from registering for the referendum on Khalistan, there was no other evidence that his wife, Ms. Kaur, advocated for Khalistan in India, participated in pro-Khalistan events in Canada, or would support the movement in the future.

[19] In light of the above, the RAD concluded that the Singh family had failed to demonstrate that their support of Khalistan is a deeply held political opinion and an innate element of their identity. The RAD was equally not convinced that, given the Singh family's particular circumstances, refraining from expressing their support for Khalistan would infringe on their fundamental rights and constitute persecution.

[20] In addition, the RAD found no evidence that Indian authorities have information on pro-Khalistan supporters in Canada or the Singh family in particular and that, even if they did, they would not perceive the Singh family as supporters of Khalistan given their limited activities in Canada.

[21] Turning to the second prong of the IFA test, the RAD agreed with the RPD that the Singh family had not proven that the three IFA cities would be objectively unreasonable or unduly harsh for them based on their personal circumstances, including their level of education, work experience, age, religion, lack of relatives and family, and language. For instance, the RAD reiterated that while the country condition evidence reveals instances of religious discrimination against Sikhs, such discrimination does not rise to a level that renders the IFA locations objectively unreasonable. The RAD also found that Punjabi is spoken in New Delhi and Faridabad and that Mr. Singh would be able to find work in the IFA locations since he was able to do so in Canada in spite of a lack of work experience outside the field of agriculture.

C. *Standard of review*

[22] It is not disputed that the standard of reasonableness applies to the Decision under review and to findings regarding the existence of a viable IFA (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1554 at para 18 [*Singh 2023*]; *Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557 at para 16; *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at para 19 [*Valencia*]; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 14; *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62 at para 6; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 17 [*Singh 2020*]). This is confirmed

by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

[23] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[24] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a "reasons first" approach and begin its inquiry by examining the reasons provided with "respectful attention", seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[25] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

III. Analysis

[26] The Singh family's overarching argument is that the RAD erred in its IFA determination by omitting to consider, in its analysis under the second prong of the test, that they will not be capable of expressing their support for the Khalistan movement and their Sikh religion in the IFA locations. First, they submit that the RAD should not have exclusively analyzed the issue under the first prong of the IFA test and that it should have re-examined it under the second prong. In doing so, they explicitly contest the RAD's finding (made under the first prong) that there is insufficient evidence that they are active members of the Khalistan movement or that they have deeply held pro-Khalistan beliefs. Second, they believe that the RAD failed to consider item 12.8 of the National Documentation Package for India [NDP] in its analysis of the reasonableness of the IFA locations.

[27] I am not persuaded by the submissions put forward by the Singh family.

[28] As pointed out by the respondent, the Minister of Citizenship and Immigration [Minister], the RAD correctly applied the two-prong IFA test and reasonably concluded that the Singh family have a viable IFA in New Delhi, Mumbai, and Faridabad. The Singh family have simply not established that they will be persecuted in the IFA locations due to their advocacy for Khalistan, or that it would be unreasonable for them to relocate to the IFA locations.

A. *The applicable test on IFA determinations*

[29] The test to determine the existence of a viable IFA comes from *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*]. These decisions from the Federal Court of Appeal state that two criteria must be established, on a balance of probabilities, in order to find that a proposed IFA is reasonable: 1) there must be no serious possibility of the claimant being subject to persecution in the part of the country in which the IFA exists; and 2) it must not be unreasonable for the claimant to seek refuge in the IFA, upon consideration of all their particular circumstances. The threshold for the second prong of the test is very high and asylum seekers must present actual and concrete evidence of the existence of conditions that would jeopardize their life or safety if they were to attempt to relocate to the IFA locations (*Singh v Canada (Citizenship and Immigration)*, 2024 FC 1080 at para 18).

[30] In *Singh 2020*, the Court reminded that "the analysis of an IFA is based on the principle that international protection can only be offered to refugee protection claimants in cases where the country of origin is unable to provide to the person requesting refugee protection adequate protection everywhere within their territory" [emphasis added] *(Singh 2020* at para 26). If a refugee claimant has a viable IFA, this will negate a claim for refugee protection under either section 96 or 97 of the IRPA, regardless of the merits of other aspects of the claim (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 7).

[31] When an IFA is established, the onus is on the refugee claimant to demonstrate that the IFA is inadequate (*Thirunavukkarasu* at para 12; *Salaudeen v Canada (Citizenship and Immigration)*, 2022 FC 39 at para 26; *Manzoor-Ul-Haq v Canada (Citizenship and Immigration)*, 2020 FC 1077 at para 24; *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paras 43–44).

[32] The Singh family claim that they do not contest the RAD's analysis concerning the first prong of the IFA test. With respect, this is not accurate. Their argument under the second prong is inexorably linked to the RAD's findings under the first prong pertaining to their alleged fear of persecution on the basis of their pro-Khalistan advocacy. More specifically, the Singh family in fact challenge the RAD's factual conclusion under the first prong that they are not active supporters of the Khalistan movement and that they do not have deeply held pro-Khalistan beliefs.

[33] I will thus examine the RAD's determinations under the first prong that concern the Singh family's support for Khalistan, in addition to the RAD's analysis under the second prong.

B. *There is no serious possibility of persecution or likely risk of harm in the IFA locations*

[34] In the Decision, the RAD provided detailed and defensible reasons for its conclusion that the Singh family were not at risk for being supporters of the Khalistan movement. It determined that the Singh family had not demonstrated that they are active advocates of the Khalistan movement, that they have deeply held pro-Khalistan beliefs, or that the Indian authorities — including the Punjab police — would perceive them as Khalistani militants.

[35] In its reasons, the RAD explicitly recognized that a claimant cannot be asked to renounce deeply held beliefs or stop exercising their fundamental rights or conceal, refrain, or repress innate element of their identity to avoid persecution (*Gur v Canada (Citizenship and Immigration)*, 2012 FC 992 at para 22 [*Gur*]). It also took note of item 12.8 of the NDP, which elaborates on the treatment of Khalistan supporters in India. However, in its examination of the available evidence, the RAD agreed with the RPD's finding that the Singh family did not express their political views during their four years in Canada, other than participating in a few events and registering to vote in a referendum on Khalistan. As such, they were not active Khalistan supporters.

[36] Furthermore, the RAD offered three additional reasons in its analysis. First, it highlighted that, during his testimony before the RPD, Mr. Singh testified that he was not politically active in India, that he did not hold pro-Khalistan rallies but rather only participated in some (where he tried to recruit supporters), that he did not know of any pictures of him taken at the rallies or of any related social media posts showing or mentioning him, and that that he did not know when the referendum on a Khalistan state would take place. Second, the RAD pointed out that, apart from Ms. Kaur's voter's card for the referendum, there was no other evidence that she is an advocate for Khalistan. The evidence did not show that she participated in any pro-Khalistan events and she did not testify that she supports Khalistan at the RPD hearing. Third, the RAD noticed that, in their addendum to their basis of claim, the Singh family stated that the police are accusing them of being Khalistani militants. Yet, they failed to elaborate on this statement at the RPD hearing.

[37] In their submissions to the Court, the Singh family contend that the RAD's determination on their lack of active advocacy for Khalistan or of deeply held Khalistan beliefs is "egregiously microscopic and unreasonable". They accuse the RAD of handpicking evidence. I do not agree with this reading of the RAD's reasons. As the Minister noted in his submissions, there is nothing microscopic in considering the lack of risks faced by the Singh family in light of their timid support for the Khalistan movement (*Singh v Canada (Citizenship and Immigration)*, 2024 FC 1290 at paras 26–28). On the contrary, as discussed above, the RAD considered the evidence as a whole and did not restrict its analysis to certain pieces of evidence.

[38] Moreover, the Singh family argue that the RAD disregarded the presumption of truth or reliability of statements from refugee applicants in its evaluation of Mr. Singh's testimony on his support for Khalistan. With respect, this argument does not stand up to jurisprudence on the scope of the presumption. As I stated in *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 [*Huang*], the presumption of truth or reliability of statements made by refugee applicants, as expressed in *Maldonado v Canada (Minister of Employment and Immigration)*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (FCA), cannot be equated with a presumption of sufficiency (*Huang* at para 43). Even if presumed credible and reliable, evidence from a refugee applicant is not automatically sufficient, in and of itself, to establish the facts on a balance of probabilities. This is for the trier of fact to determine. In other words, the RAD did not question the credibility of Mr. Singh's testimony, but found that his evidence was insufficient to establish an active support for Khalistan or deeply held beliefs in it. It was certainly open to the RAD to make this determination.

[39] In short, I find that the RAD's determination that the Singh family were not active supporters of Khalistan, that they did not have deeply held beliefs on the matter, and that the Indian authorities will not perceive them as such "bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). There are no grounds to intervene on this matter, as it is well established that reviewing courts must refrain from "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

C. *The IFA locations are reasonable*

[40] In its Decision, the RAD then found that the Singh family had not proven that relocation to New Delhi, Mumbai, or Faridabad would be objectively unreasonable or unduly harsh based on their personal circumstances, namely, their level of education, work experience, age, religion, lack of relatives and family, and language. The Singh family do not contest the RAD's analysis of any of the aforementioned factors.

[41] The Singh family however argue that the RAD should have specifically considered their capability to express their deeply held pro-Khalistan beliefs in the IFA locations under its second prong analysis, despite having already impugned the significance of these beliefs under the first prong.

[42] Despite the able arguments made by counsel for the Singh family on this point, I am not convinced that the RAD can be faulted for its analysis of the second prong of the IFA test. I agree with the Minister that it was sufficient for the RAD to properly examine this issue under the first prong and that, in those circumstances, it was reasonable to find no need to reconsider it

under the second prong. Indeed, the RAD was alive to the issue and rightly acknowledged that a claimant cannot be asked to renounce deeply held beliefs or stop exercising their fundamental rights or conceal, refrain, or repress innate element of their identity to avoid persecution (*Gur* at para 22). However, it distinguished this principle laid out in *Gur* from the present case, finding that the Singh family had not proven, on the balance of probabilities, that they had any deeply held pro-Khalistan beliefs or that the exercise of any fundamental right was jeopardized. Hence, there was no longer any need for further discussion by the RAD on this issue, whether under the first or the second prong.

[43] To illustrate the above reasoning, it is useful to refer to the following remarks made by Justice Andrew D. Little in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 297 at paragraph 35:

> [35] "The RAD's conclusions at paragraphs 32 and 35 of its reasons were that the applicant did not have such personal characteristics – in Convention terms, he did not show a nexus to a ground of persecution on the basis of his alleged advocacy for Khalistan. Without that factual basis, the RAD was not required in law to conduct any further analysis of the possible risks to the applicant as an advocate for Khalistan. Put another way, the RAD did not accept that the applicant was an active member of the Khalistan movement or that he had deeply held views on the topic and, accordingly, the RAD did not have to consider whether he might be persecuted or mistreated on that basis on his return to India." [emphasis added]

[44] In the same vein, this Court also held that, when the RAD finds that alleged agents of persecution have no motivation to pursue an applicant in a IFA, it is "unnecessary for the RAD

to revisit [the] fear-related claims at the second stage of the IFA analysis" (*Kaur v Canada (Citizenship and Immigration)*, 2021 FC 1219 at para 22).

[45] As a second argument, the Singh family also assert that the RAD erroneously omitted to discuss item 12.8 of the NDP in its analysis of the reasonableness of the IFA locations. I am equally not convinced by this submission. Again, the RAD did not accept that the Singh family were active supporters of the Khalistan movement or that they had deeply held views on the topic. As a result, even though it did mention item 12.8 of the NDP in its first prong analysis, it was not obliged to further examine the country condition evidence regarding the persecution of Khalistani militants, as the Singh family did not fit the profile of those persons covered by the NDP materials. In other words, given its finding that the Singh family were not active supporters of the Khalistan movement, item 12.8 of the NDP was in fact irrelevant to the Singh family's situation and did not have to be considered in the RAD's assessment of the reasonableness of the IFA locations.

[46] In any event, an administrative decision maker's failure to mention evidence does not necessarily make a decision unreasonable (*Singh 2023* at para 35; *Valencia* at para 25; *Khir v Canada (Citizenship and Immigration)*, 2021 FC 160 at para 48 [*Khir*]). It is well-settled law that administrative decision makers are presumed to have weighed and considered all the evidence before them unless proven otherwise (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36). The failure to consider specific evidence must be viewed in context. It is only when the evidence is critical and squarely contradicts the decision maker's conclusion that the reviewing court may determine that the tribunal disregarded the material before it (*Singh*

2023 at para 35; *Khir* at para 48; *Torrance v Canada (Attorney General)*, 2020 FC 634 at para 58). In this matter, there is no such crucial omission of evidence.

[47] In sum, the Decision is based on an internally coherent reasoning that is both rational and logical. First, the RAD provided multiple conclusions supporting its finding that the Singh family were not at risk for being supporters of the Khalistan movement such that the first prong of the IFA test is satisfied. Second, the RAD provided equally coherent reasons on why the Singh family could reasonably relocate to New Delhi, Mumbai, and Faridabad, which fulfills the second prong of the IFA test. Third, the RAD did not err in its IFA determination by not reconsidering the Singh family's support for Khalistan or item 12.8 of the NDP in its second prong analysis. Consequently, the Decision was responsive to the evidence, and its findings regarding the IFA locations are defensible based on the facts and the law.

IV. Conclusion

[48] For the reasons set forth above, this application for judicial review is dismissed. The RAD reasonably considered the evidence in concluding to the existence of a viable IFA in New Delhi, Mumbai, and Faridabad for the Singh family. There are no grounds for the Court to intervene.

[49] There are no questions of general importance to be certified.

JUDGMENT in IMM-7680-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.

2. There is no question of general importance to be certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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