Federal Court  Cour fédérale

Date: 20240926

Docket: IMM-4083-23

Citation: 2024 FC 1522

Montreal, Quebec, September 26, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

HARISH SACHDEVA
POONAM SACHDEVA
SHIVANI SACHDEVA
BHAVYA SACHDEVA

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Harish Sachdeva, accompanied by his wife, Poonam Sachdeva, and their two children, Shivani Sachdeva and Bhavya Sachdeva [together, the Sachdeva family], are seeking judicial review of a decision dated March 7, 2023 [Decision], whereby the Refugee

Appeal Division [RAD] dismissed their appeal and confirmed the Refugee Protection Division's [RPD] decision denying their refugee claim. The RAD rejected the Sachdeva family's claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because it identified viable internal flight alternatives [IFA] in either Mumbai, Delhi, or Kolkata in their country of citizenship, India.

[2] The Sachdeva family first submit that their right to procedural fairness was breached due to the inadequate representation of their former counsel. In addition, the Sachdeva family claim that the RAD committed a reviewable error by engaging in a microscopic analysis of the evidence and by failing to analyze the "new" evidence submitted by their former counsel and which, they believe, confirmed that any proposed IFA was unreasonable.

[3] For the reasons that follow, I will dismiss this application for judicial review. In my view, the Sachdeva family have not demonstrated that their former counsel acted incompetently, far from it, nor that the alleged acts of incompetence had any bearing on the outcome of their case. As such, there was no breach of procedural fairness. Moreover, the Decision is reasonable. The RAD properly applied the IFA test and reasonably concluded that the Sachdeva family have viable IFAs in Mumbai, Delhi, and Kolkata.

II. Background

A. *The factual context*

[4] The Sachdeva family fears one of Mr. Sachdeva's former employees who, back in December 2014, had allegedly stolen a gun from the shop Mr. Sachdeva owned in his home city,

which is located in the state of Punjab. Mr. Sachdeva filed a police report shortly thereafter and indicated that the former employee stole the gun in question. The local police subsequently registered a First Information Report against "unknown persons" — instead of against the former employee — despite Mr. Sachdeva specifically reporting the latter's identity.

[5] The Sachdeva family allege that, following the filing of the police report, the former employee and his associates threatened their lives in an attempt to have Mr. Sachdeva withdraw the police report. Specifically, they allege receiving death threats and physical attacks by the former employee and his associates, including an attempt made on Mr. Sachdeva's life. According to the Sachdeva family, the police then closed Mr. Sachdeva's case at the behest of the former employee.

[6] Further to an approach to a senior police officer, Mr. Sachdeva was able to convince the police to reopen the case. However, the Sachdeva family allege that they are not safe anywhere in India because they suspect the police, who they assert worked hand-in-hand with their agents of persecution and are known to be corrupt, will not protect them from the former employee and his associates.

B. *The RPD and RAD decisions*

[7] On March 22, 2022 and on August 15, 2022, the RPD heard the Sachdeva family's claim. On September 26, 2022, the RPD rejected their claim based on the availability of IFAs in Mumbai, Delhi, and Kolkata. Specifically, the RPD concluded that, despite the Sachdeva family's honest and sincere belief, there was insufficient evidence to demonstrate, on a balance of probabilities, that their agents of harm are motivated to find them in the IFAs or have the

means to do so. The RPD further noted that while it may be disruptive to relocate to the IFA locations, the Sachdeva family have not demonstrated that it would be objectively unreasonable or unduly harsh for them to stay in these IFA locations.

[8] On October 12, 2022, the Sachdeva family lodged an appeal to the RAD through their counsel at the time, Me Armando Javier Machado Rubio. On March 7, 2023, the RAD rejected their appeal and confirmed the RPD's conclusion that they have viable IFAs in Mumbai, Delhi, and Kolkata.

[9] On March 28, 2023, now represented by Me Jonathan Gruszczynski, the Sachdeva family filed an application for leave and judicial review against the RAD Decision, alleging primarily that Me Rubio inadequately represented them before the RAD.

C. *The standard of review*

[10] 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 (*Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557 at para 16; *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at para 19; *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*]; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11). 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*]).

[11] 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).

[12] Such a review must include a rigorous and robust 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).

[13] 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).

[14] With respect to issues of procedural fairness, the Federal Court of Appeal has repeatedly stated that these do not require the application of the usual standards of judicial review, although the reviewing exercise is akin to correctness review (*Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 33–56 [*CPR*]). It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*CPR* at para 54).

[15] Consequently, when an application for judicial review concerns procedural fairness and a breach of the principles of fundamental justice, the question that must be answered is not necessarily whether the decision was "correct". Rather, the reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (*Algoma Steel Inc v Canada (Attorney General)*, 2023 FCA 164 at para 22; *CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54). Circumstances that may be considered are namely "factors within the expertise and knowledge of the tribunal, including the nature of the statutory scheme and the expectations and practices of the [decision maker's] constituencies" (*Ghafari v Canada (Attorney General)*, 2023 FCA 206 at para 15, citing *Council of Canadians with Disabilities v VIA Rail Canada Inc*, 2007 SCC 15 at

para 231). Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness (*Maritime Employers Association v Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93 at para 81).

III. Analysis

A. *The alleged incompetence of Me Rubio*

[16] The Sachdeva family's main argument is that that their right to procedural fairness was breached due to the inadequate representation of their former counsel. More specifically, they claim that Me Rubio failed to submit one of two affidavits they provided him and incorrectly confirmed in the appellants' record before the RAD that he was not submitting "new" evidence pursuant to subsection 110(4) of the IRPA. As a result, they allege that Me Rubio erroneously stated that they were therefore not requesting an oral hearing pursuant to subsection 110(6). In their opinion, Me Rubio's actions constituted negligent and inadequate representation, which negatively affected their appeal before the RAD.

[17] I disagree and find that the Sachdeva family's submissions on incompetence of counsel are devoid of any merit.

[18] As pointed out by the respondent, the Minister of Citizenship and Immigration [Minister], Me Gruszczynski failed to follow the Court's Protocol dated March 7, 2014 entitled *"Allegations against Counsel or other authorized representative in Citizenship, Immigration and Protected Person cases before the Federal Court"*, now included in the October 31, 2023 *"Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings"*

[Guidelines]. In particular, Me Gruszczynski did not wait for the former counsel's response to his allegations of incompetence before filing his motion record with the Court (Guidelines at paras 52–53). Me Gruszczynski went even further: despite the fact that he eventually received and was effectively in possession of Me Rubio's response, he deliberately chose not to provide it to the Court.

[19] This is a clear case of the Guidelines not being followed and being blatantly ignored by Me Gruszczynski. This failure to comply with the Guidelines is sufficient, in and of itself, to reject the Sachdeva family's claims of incompetence. The Guidelines set out a specific procedure for allegations of incompetence and the Court fully expects all parties to abide by them. Moreover, even if I were to consider the incompetence arguments on their merit, the alleged breach of procedural fairness would be of no consequence and would clearly be insufficient to justify quashing the Decision, as the evidence Me Rubio allegedly failed to file would have had no bearing whatsoever on the outcome of the RAD's Decision.

[20] In fact, if there was any incompetence in the present matter, it undoubtedly lies with Me Gruszczynski, who chose to turn a deaf ear to the clear requirements of the Guidelines, misled the Court on the status of Me Rubio's response, and relied on an affidavit he claimed should have been filed but which, on its very face, was entirely meritless and without any probative value.

(1) The applicable test for incompetence of counsel

[21] The test for allegations of ineffective or incompetent representation requires that three criteria be met. The Sachdeva family must (i) corroborate the allegation by giving notice to the

former counsel and providing them with an opportunity to respond, (ii) establish that the former counsel's act or omission constituted incompetence without the benefit and wisdom of hindsight, and (iii) demonstrate that the outcome would have been different but for the incompetence (*Macias Vargas v Canada (Citizenship and Immigration)*, 2024 FC 736 at paras 15–17 [*Macias Vargas*]; *Abuzeid v Canada (Citizenship and Immigration)*, 2018 FC 34 at para 21; *Badihi v Canada (Citizenship and Immigration)*, 2017 FC 64 at para 17 [*Badihi*], citing *Galyas v Canada (Citizenship and Immigration)*, 2013 FC 250 at para 84).

[22] The burden of proof to demonstrate counsel incompetence is very high. Indeed, according to the case law, "evidence of counsel's incompetence must be so clear and unequivocal and the circumstances so deplorable that the resulting injustice caused to the claimant is blatantly obvious" (*Blandon Quintero v Canada (Citizenship and Immigration)*, 2024 FC 966 at para 12 [*Blandon Quintero*], citing *Mbaraga v Canada (Citizenship and Immigration)*, 2015 FC 580 at para 25 [*Mbaraga*]).

[23] To demonstrate incompetence, "[t]he burden is on the applicants to establish the performance and the prejudice components of the test to demonstrate a breach of procedural fairness" (*Reyes Contreras v Canada (Citizenship and Immigration)*, 2023 FC 1453 at para 39 [*Reyes Contreras*], citing *Badihi* at para 18). The test's criteria are therefore cumulative and both components must be established to meet the heavy burden placed on the applicant (*Reyes Contreras* at para 39).

[24] I pause to add that the Court adopted the Guidelines to help streamline the first element of the test for incompetence of counsel and "to assist the Court in its adjudication of applications

in which [allegations of incompetence] are made, and to ensure a procedurally fair process for the parties involved" (Guidelines at para 48).

(2) Application to this case

(a) *The Guidelines requirements*

[25] With respect to the first element of the test, Me Gruszczynski did contact Me Rubio to advise him of the allegations, and instructed him that he had ten days to respond to the allegations. The record was also sent to Me Rubio for his observations. However, as noted by the Minister, Me Gruszczynski stopped there, overtly failed to follow the remainder of the Guidelines, and did not wait for Me Rubio's response before filing his motion record with the Court in this matter.

[26] The first element of the test is thus not met, as Me Rubio was given notice but Me Gruszczynski did not wait for Me Rubio's response prior to filing his materials with the Court. In fact, the applicants' record does not currently include Me Rubio's response.

[27] At the hearing before the Court, Me Mark Gruszczynski — who replaced his son for the oral submissions — tried to suggest that, notwithstanding the clear language of the Guidelines, he somehow did not have an obligation to provide Me Rubio's response as it was not favourable to his position. In an adversary judicial system like ours, he said, a party does not have to make the case of the party opposite. To be blunt, this argument is preposterous and without any merit. It regrettably reflects a profound misunderstanding and misapprehension of the Guidelines with respect to allegations of incompetence of counsel.

[28] The most current version of the Guidelines (which counsel for the Sachdeva family apparently were not aware of) do not leave any doubt as to the requirements to be followed in instances of incompetence of counsel. In all of its iterations, the Guidelines were meant to ensure that all relevant information is before the Court when an allegation of ineffective assistance is made against former counsel. They also address procedural fairness concerns for the former counsel, whose competence is questioned and whose professional reputation is therefore at stake.

[29] In *Brown v Canada (Citizenship and Immigration)*, 2024 FC 105 at paragraphs 22–25, Justice John Norris aptly summarized the three key junctures where the Guidelines require notice to former counsel of an allegation of ineffective assistance and an opportunity to respond. The following three paragraphs are based on this summary.

[30] First, prior to raising the issue before the Court, current counsel must notify former counsel of the allegation in writing, alert former counsel that the issue may be raised in an application for leave and for judicial review, and invite any response that former counsel may wish to make to the allegation. Among other things, former counsel must be given sufficient information about the allegation to be able to provide a meaningful response, should they so choose (Guidelines at para 50). Current counsel is expressly required to wait to receive and carefully consider the response from the former counsel before filing and serving the application record (Guidelines at para 52).

[31] Second, if, in light of the available information (including any response from former counsel), current counsel decides to pursue the allegation as a ground for judicial review, the perfected application must be served on former counsel and proof of service must be provided to the Court (Guidelines at para 53). Again, the Guidelines specify that, if former counsel provides

a response to the allegation as it has been advanced in the application record, current counsel must provide this response to the Court (Guidelines at para 53). Current counsel may also provide material replying to former counsel's response. All of these materials are to be submitted to the Court so that the Court can consider them Court when determining the leave application (Guidelines at para 60).

[32] Third, if leave to proceed with judicial review is granted, current counsel must then provide former counsel with a copy of the order granting leave and setting the matter down for a hearing (Guidelines at para 63). This affords former counsel an opportunity to seek leave to intervene in the judicial review application, should they wish to do so.

[33] The Guidelines reflect the fact that the Court takes allegations of incompetence of counsel very seriously, and that such accusations should never be made lightly. As officers of the Court, current counsel are expected to cautiously verify whether an allegation of incompetence against former counsel is true, to investigate the matter thoroughly before advancing such accusation before the Court, and to drop the allegations if there is insufficient merit to them. Here, Me Gruszczynski willingly elected to ignore all of those steps, because he felt he did not have to. Had he done what he was required to do, he would have quickly realized that there was no evidence to support an allegation that the Sachdeva family's former counsel was incompetent or that the outcome of the application would have been different but for the alleged incompetence.

[34] Instead, Me Gruszczynski decided to move ahead with his baseless allegation and to waste the Court's valuable time and resources. This type of behaviour has no place before the

Court. On this point, it is worth quoting the words of Justice Vanessa Rochester (as she then was) in *Diakité v Canada (Citizenship and Immigration)*, 2024 FC 170 at paragraph 48:

> [48] Judges ought to be able to rely on the representations that counsel make as officers of the Court. As noted above, our justice system functions in large part because the Court expects to be able to trust and rely on the representations made by officers of the Court. While a lawyer shall seek to fearlessly advocate for their client, they must do so honourably, in compliance with the law, and in a manner that complies with their professional obligations. This includes their duty of candour to the Court. Counsel must never mislead or attempt to mislead the Court. If counsel has inadvertently done so, then counsel must correct it the moment it comes to their attention.
>
> [Emphasis added]

[35] In this case, Me Gruszczynski's behaviour is tantamount to misleading the Court. When allegations of incompetence of former counsel are raised, current counsel have a duty and an obligation to the Court to cautiously verify the issue before relying on such an argument on judicial review. If they fail to do so, they neglect their duty of candour to the Court, which is, moreover, codified in each law society's code of conduct (see, for example, Québec's *Code of Professional Conduct of Lawyers*, CQLR c B-1, r 3.1 at s 116).

[36] I underline that the Court's Guidelines are there to be followed and failing to do so is not helpful to the Court, nor fair for the opposing party (*Medina Rodriguez v Canada (Citizenship and Immigration)*, 2024 FC 401 at para 44).

(b) *Me Rubio's response*

[37] Having said that, in this case, the Minister thankfully corrected Me Gruszczynski's omission and provided the Court with Me Rubio's actual response in their written submissions, albeit without an affidavit.

[38] This surprisingly led Me Gruszczynski to make another inconceivable move. Despite his own glaring failure to comply with the Guidelines and to enclose a copy of Me Rubio's response to his accusations of incompetence, Me Gruszczynski added insult to injury and sent a letter to the Court arguing that the Minister comes to the Court with unclean hands because he included Me Rubio's missing response as evidence in their memorandum, without the required affidavit.

[39] In the circumstances, this complaint and behaviour by Me Gruszczynski is nothing short of outrageous and unprofessional.

[40] While the Sachdeva family may be technically correct that sections 306 and 307 of the *Federal Courts Rules*, SOR/98-106 prescribe that evidence must be attached to an affidavit if a party wishes to rely on it, an exception must surely be made in the case at bar, as Me Rubio's response ought to have been included in the applicants' record in the first place, from the onset of this proceeding. This Court has noted that "the rule that evidence is to be provided by affidavits is not a mere question of technicality; it ensures that no one is hurt by allegations which one does not have a chance to challenge" (*IBM Canada Ltd v Deputy Minister of National Revenue (Customs & Excise)*, 1991 CanLII 13584 (FCA), [1992] 1 FC 663 (FCA) at para 18).

[41] In the present matter, the Sachdeva family are evidently not prejudiced by the absence of an affidavit from the Minister, as they have been well aware of Me Rubio's letter when it was

received by their counsel over a year ago, they were the ones who were obliged to file it with the Court, and they failed to do so.

[42] Given the circumstances, the Sachdeva family's request to have Me Rubio's response struck is denied. Me Rubio's response ought to have been included in their record from the start, since it was incumbent on the Sachdeva family to provide this Court with this response to their allegations of incompetence. The only reason Me Rubio's response is now before the Court is thanks to the Minister enclosing it with their memorandum. While it is true that Me Rubio's document should have been accompanied by an affidavit, I am exercising my discretion to accept it for filing, given it was initially required to be filed pursuant to the Guidelines.

[43] I must add that accusing a party of failing to come to the Court with clean hands is a very serious allegation. Such accusation, particularly when the Minister was simply trying to rectify an error caused and instigated by counsel for the Sachdeva family, should not be made lightly. Again, the behaviour of Me Gruszczynski on this front is deplorable, and the Court strongly condemns it without reserve.

(c) *The alleged incompetence and the missing evidence*

[44] Despite Me Gruszczynski's failure to comply with the Guidelines, and out of interest for the proper administration of justice, I nevertheless considered the remainder of the incompetence of counsel test. For the reasons that follow, the other requirements of the test have also clearly not been met in the case at bar.

[45] With respect to the second criterion of the test, the Sachdeva family have not provided sufficient evidence to show the clear and unequivocal nature of their former counsel's

incompetence before the RAD, especially in light of Me Rubio's submissions. Indeed, Me Rubio noted in his response letter that he had clearly indicated in his materials before the RAD that new evidence was added to the record, and that he justified the addition of the evidence in his submissions before the RAD. In the Decision, the RAD then thoroughly considered an additional affidavit dated November 15, 2022, but found it insufficient to support the Sachdeva family's claim.

[46] Furthermore, Me Rubio explained that the Sachdeva family received a copy of the materials to be filed with the RAD on November 3, 2022, prior to filing them, and that the materials were properly translated from French to Hindi for them. On November 4, 2022, Mr. Sachdeva indicated that he understood the translation and was satisfied with the content of the documents. Me Rubio then received the Sachdeva family's express consent that the materials could be filed as they were. Consequently, the Sachdeva family were well aware of exactly which materials were filed before the RAD.

[47] Finally, with respect to the final criterion of the incompetence of counsel test, the evidence that Me Rubio apparently did not file — namely a second affidavit dated November 11, 2022 — would have had no bearing on the outcome of the RAD's Decision. The information contained in this affidavit evidence could not change the RAD's conclusion on the lack of means or motivation of the Sachdeva family's agents of harm to track them in the proposed IFA locations. In this second affidavit, the affiant — an alleged neighbour residing in Mr. Sachdeva's village — stated that four to five unknown persons threatened him regarding the whereabouts of Mr. Sachdeva, without any detail. The remaining information contained in the affidavit was already before the RAD. However, as I pointed out to Me Gruszczynski during the hearing, the

affiant, a resident of India from the region where the Sachdeva family lived, said at the beginning of his affidavit that he has known Mr. Sachdeva for the "last couple of years", whereas Mr. Sachdeva and his family left India in October 2018, i.e. four years before the affidavit was signed… Needless to say, on its face, this evidence was not credible and had no probative value whatsoever. It appears that counsel for the Sachdeva family failed to notice that.

[48] There is therefore nothing in the record to support a conclusion that the result of the RAD's analysis would have been different had the alleged acts of incompetence not occurred. Consequently, the third step of the test is equally not met.

[49] Incompetence of counsel will only constitute a breach of procedural fairness in extraordinary or exceptional circumstances (*Blandon Quintero* at para 24; *Mbaraga* at para 25). In light of the above analysis, the Sachdeva family have completely failed to demonstrate that their former counsel's alleged incompetence is so clear and unequivocal as to justify the Court's intervention.

B. *The Decision is reasonable*

[50] The Sachdeva family also submit, as a second argument against the Decision, that the RAD committed a reviewable error by engaging in a microscopic analysis of the evidence and by failing to properly analyze the evidence, which, in their view, confirmed the fact that any proposed IFA was unreasonable.

[51] I do not agree.

[52] On the contrary, the RAD correctly applied the two-prong IFA test and reasonably concluded that the Sachdeva family have viable IFAs in Mumbai, Delhi, or Kolkata. The Sachdeva family simply did not provide any convincing evidence that their agents of persecution have the means or motivation to find them in the proposed IFA locations, or that it would be unreasonable for them to relocate there.

(1) The applicable test for IFA determinations

[53] 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.

[54] 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).

[55] 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).

(2) The first prong of the IFA test: no serious possibility of persecution in the IFA

[56] With respect to the first prong of the test, the RAD reasonably assessed the means and motivation of the Sachdeva family's agents of persecution to find them in the proposed IFAs. While the RAD acknowledged that their persecutors had limited motivation to find them in the proposed IFAs, the RAD concluded that they did not have the means to do so. Indeed, in *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 13 [*Leon*], the Court explains "that there is a difference between a persecutor's ability to pursue an individual throughout a country and his desire to do so or interest in doing so. The fact that a persecutor is able to pursue an individual is not decisive evidence that he is motivated to do so. If the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution" (*Leon* at para 13). On the other hand, and as is the case here, if the persecutor has no means of finding or pursuing an individual, there is also no serious possibility of persecution.

[57] There is nothing unreasonable in the RAD's aforementioned conclusion, and the Sachdeva family have failed to meet their onus of demonstrating the means of their persecutors to find them in the proposed IFAs.

[58] I underline that the issue before the Court is not whether the interpretations proposed by the Sachdeva family might be defendable, acceptable, or reasonable. Rather, the Court must examine this issue in respect of the interpretation made by the RAD in the Decision (*Vavilov* at para 86). The fact that there may be other reasonable interpretations of the facts does not mean that the RAD's interpretation was unreasonable (*Moonshiram v College of Immigration and Citizenship Consultants*, 2024 FC 1212 at para 71, citing T*ong v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 625 at para 32). The exercise of reinterpreting the RAD's Decision would amount to indirectly applying the correctness standard, which the Supreme Court in *Vavilov* has expressly prohibited reviewing courts from doing so.

[59] Relying on *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*], the Sachdeva family submit that it would be unreasonable to expect their family or friends to lie to the persecutors and that being unable to share their location with them is akin to hiding, thus making any IFA unreasonable.

[60] In my view, *Ali* clearly does not apply in the present matter. I have discussed in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1715 [*Singh 2023*] how cases such as *Ali* or *AB v Canada (Citizenship and Immigration)*, 2020 FC 915 [*AB*] can be distinguished from the present matter. In *Ali* and *AB*, there was evidence not only of the agents of persecution's means and motivation, but also of dire and serious threats of harm and violence made against the family members themselves. There was evidence that the applicants' relatives would be in danger if they lied about the applicants' whereabouts, and that the persecutors had the capacity and willingness to pursue the applicants in their new locations based on the information obtained. There is no such evidence here.

[61] As noted above, the RAD reasonably determined that there is no evidence of any capacity of the agents of harm to locate the Sachdeva family outside of their region (*Singh 2023* at para 47; see also *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1080 at paras 21–24 [*Singh 2024*]; *Chatrath v Canada (Citizenship and Immigration)*, 2024 FC 958 at paras 22–24, 26–29). Nor is there any clear and convincing evidence of direct threats of harm and violence against their family members or friends.

[62] As the Court noted in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1151 at paragraph 17, the holdings in *Ali* or *AB* are fact-specific and cannot be generalized to every IFA situation. An agent of persecution's mere knowledge of the refugee claimant's whereabouts does not in itself establish risk or danger if they are unable or unwilling to act accordingly (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 24).

(3) The second prong of the IFA test: the IFA locations are reasonable

[63] To satisfy the second prong of the IFA test and determine that an IFA is unreasonable, there is a very high threshold: there must be actual and concrete evidence of conditions that would jeopardize an applicant's life and safety in travelling or temporarily relocating to the proposed safe area (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) at para 15; *Singh 2024* at para 18).

[64] Here, the RAD affirmed the RPD's conclusions that while it may be disruptive to relocate to the proposed IFA locations, the Sachdeva family have not demonstrated that it would be objectively unreasonable or unduly harsh for them to stay in the proposed IFA locations. To this effect, the RAD specifically noted that given their circumstances, they would be able to support

themselves, find work and housing, and access services in the proposed IFAs. The Sachdeva family have not provided any evidence to suggest the contrary, let alone actual and concrete evidence of conditions that would jeopardize their lives and safety in travelling and relocating to the proposed IFAs. As such, the Decision is also reasonable with regard to the second prong of the IFA test.

IV. Conclusion

[65] For the reasons set forth above, this application for judicial review is dismissed. The allegations of incompetence of counsel were entirely meritless and should not have been brought by the Sachdeva family's current counsel. On the merits, the RAD's Decision is based on an internally coherent reasoning that is both rational and logical. The RAD provided multiple conclusions supporting its determination that the agents of persecution feared by the Sachdeva family would not have the means or motivation to locate them in the proposed IFAs. The RAD also provided coherent reasons explaining how the proposed IFAs in Mumbai, Delhi, and Kolkata are not unreasonable to the extent that the Sachdeva family's lives or safety would be in in jeopardy.

[66] No question for certification was proposed, and I agree that none arises.

[67] On a final note, I wish to add that, had the Minister asked for costs, I would have granted them in the unusual and regrettable circumstances of this case.

[68] In immigration matters under the IRPA, costs can only be awarded on applications for judicial review when there are "special reasons", which is a high threshold (*Almuhtadi v Canada*

(Citizenship and Immigration), 2021 FC 712 at paras 55–56, citing Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at para 7 and *Taghiyeva v Canada (Citizenship and Immigration*), 2019 FC 1262 at paras 17–23 [*Taghiyeva*]).

[69] Conduct that amounts to "special reasons" for costs may include the following: unnecessarily or unreasonably prolonging proceedings, acting unfairly, oppressively, or improperly, engaging in conduct that was actuated by bad faith, and undermining the judicial system's integrity (*Canada (Public Safety and Emergency Preparedness) v Oko-Oboh*, 2022 FC 740 at para 10, citing *Taghiyeva* at para 18 and *Mayorga v Canada (Citizenship and Immigration)*, 2010 FC 1180 at paras 21, 47; *Dhaliwal v Canada (Citizenship and Immigration)*, 2011 FC 201 at para 31). This Court has also found "special reasons" where there has been reprehensible, scandalous, or outrageous conduct on the part of a party (*Kaur v Canada (Citizenship and Immigration)*, 2024 FC 1155 at para 22, citing *Toure v Canada (Citizenship and Immigration)*, 2015 FC 237 at para 16).

[70] Here, as discussed above, current counsel for the Sachdeva family has shown a complete disregard for the Court's resources and its Guidelines. They have unnecessarily brought an issue of incompetence of counsel before the Court, gratuitously attacked the honesty of the Minister without any basis, and engaged in conduct that undermines the judicial system's integrity. Such behaviour has no place before the Court and, in my view, it would have justified an award of costs against the Sachdeva family and their counsel.

JUDGMENT in IMM-4083-23

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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