

Federal Court



Cour fédérale

Date: 20241029

Docket: IMM-10561-23

Citation: 2024 FC 1717

Toronto, Ontario, October 29, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

SUNPREET SINGH ANAND

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

**(Delivered from the Bench in Toronto, Ontario on October 28, 2024
and edited for syntax and grammar)**

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD]. The RAD dismissed an appeal of a decision of the Refugee Protection Division [RPD], in which the RPD found that the Applicant is not a Convention refugee or a person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* [IRPA]. Both the RPD and the RAD found that the Applicant has a safe a viable internal flight alternative

[IFA] within India, namely in Kolkata. For the reasons that follow, I find that the RAD's decision was reasonable and as a result, am dismissing this application.

[2] Mr. Applicant is a Sikh man from Punjab, India. His claim for protection is based on allegations that he was targeted and harassed by a man named PT and members of the Rashtriya Swayamsevak Sangh [RSS] and Bharatiya Janata Party (BJP) working at the behest of PT and the West Delhi police. The RPD found that the Applicant's claim lacked credibility and that he had a viable IFA in Kolkata. The RAD then dismissed his appeal and indicated that the determinative issue was the viable IFA in Kolkata.

[3] The Applicant raises a number of issues before this Court, which all question the reasonability of the IFA findings. There is no dispute that the applicable standard of review in this matter is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65). I must therefore consider the outcome of the RAD decision in light of its underlying rationale to ensure the decision as a whole bears the hallmark of reasonability – transparency, intelligibility and justification (*Vavilov* at para 15).

[4] First, the Applicant challenges the RAD decision on the basis that it did not conduct an independent analysis of the IFA and that it ignored relevant documentary evidence. I cannot accept this argument. The RAD conducted an extensive review of the IFA and addressed all arguments raised by the Applicant. It did not simply adopt the RPD's findings without independent analysis.

[5] The Applicant also contends that the RAD overlooked and ignored relevant evidence, namely the integration of the Crime and Criminal Tracking Network Systems [CCTNS] portal and policing system in India and the National Documentation Package [NDP] evidence of the treatment of Sikhs outside of Punjab. Again, I cannot agree. The RAD, in multiple sections of its written reasons, refers directly to the NDP and the CCTNS, considering the Applicant's arguments and engaged with their content in assessing the evidence before it. The mere fact agents of harm are police is not sufficient to establish that they are acting as agents of the state, such that the Applicant would risk persecution throughout India (see *Kumar v Canada (Citizenship and Immigration)*, 2024 FC 881, at para 33 [Kumar]).

[6] In finding the agents of persecution lacked the motivation and means to find him in the IFA, the RAD acknowledged the evidence before it, including the affidavits of the Applicant's brother and cousins. The RAD appropriately refused to apply the presumption of truthfulness as this evidence was based on inferences and speculations (see *Arije v Canada (Citizenship and Immigration)*, 2023 FC 1369 at para 16). The RAD addressed the means both in respect of the political parties (namely the BJP and RSS), as well as the means of the police themselves as other alleged agents of persecution. For the latter, I note that there was no evidence that the Applicant was ever suspected of being a supporter of militants or any criminal activities by the police (for instance, see paragraph 28 of the RAD's Decision at p. 13 of the Certified Tribunal Record).

[7] As for the Applicant's evidence that PT himself could track him down in Kolkata, there is no evidence of his connections there. Furthermore, there is no First Information Report, or any

indication that the police in West Delhi were ever interested in him. Given these circumstances, the RAD was reasonable in finding that there would be little to no likelihood that the Applicant would have had his name registered in the CCTNS. I cannot do better than point to Justice Gascon's cogent explanation of an applicant's fear of being flagged in the CCTNS (see *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1554 at paras 31-36), as to why the RAD's decision on the matter was reasonable in these circumstances as well. Indeed, in that case, I note that the Applicant was fingerprinted by the police. Again, there is no such evidence of any police suspicions in this case.

[8] Given that the Applicant has failed to demonstrate that the RAD was unreasonable vis-à-vis the first prong of the IFA test, there is no need to consider the second (*Kumar* at paras 33 and 40). Having said this, and for the edification of the Applicant, whose counsel asserted significant arguments based on the second prong of the IFA case, I find that the RAD's findings were also entirely reasonable with respect to the prospect of the Applicant relocating to the IFA. Specifically, the Applicant submitted in his factum that that the RAD did not conduct its analysis on the second prong of the test for IFA in light of his personal circumstances, namely his age, marital status, religion, language abilities, education and employment history. I do not agree. The RAD properly considered his personal context and situation, including these factors. The RAD noted that the Applicant speaks fluent English and Hindi, attended university, and has transferable skills, all the while considering the profile of a Sikh man outside of the Delhi/Punjab region in light of the information contained in the NDP.

[9] The RAD ultimately concluded that both parts of the test for an IFA were satisfied, once again after conducting a comprehensive analysis of the evidence, and addressing the arguments made by the Applicant's then-counsel, independently of the findings of the RPD. He has not persuaded me that there is any basis for interfering with the RAD's determination. Rather, I find that the Applicant simply disagrees with the RAD's findings with respect to the means of his agents of persecution and he effectively invites me to substitute my view of the evidence for that of the RAD, counter to the *Vavilov* at para 125.

JUDGMENT in IMM-10561-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.
3. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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