

Federal Court



Cour fédérale

Date: 20120110

Docket: IMM-3054-11

Citation: 2012 FC 30

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 10, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

**VARINDER KUMAR
ARUNA VERMA
ANCHAL VERMA
HANISH CHANDER VERMA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (IRPA), of the decision by the Immigration and Refugee

Board (IRB) dated April 7, 2011, that Varinder Kumar, his spouse, Aruna Verma, and their children, Anchal Verma and Hanish Chander Verma (the applicants), are not Convention refugees or persons in need of protection according to sections 96 and 97 of the IRPA.

[2] For the following reasons, the application for judicial review is dismissed.

II. Facts

A. Background

[3] The applicants are all citizens of India. Mr. Kumar alleges that he is of Hindu origin but is of the Sikh faith.

[4] In India, Mr. Kumar owned a tire sales business and held the position of part-time journalist for his community's newspaper. Also, he claims that he was involved an international human rights protection organization.

[5] In 2007, Mr. Kumar supported the release of Sukhdev Singh. This person was arrested, illegally detained and tortured, before being released by the police in the State of Punjab. Following his release, Mr. Singh received other threats from the police, which led to his and his family's suicide.

[6] Mr. Kumar wrote an article on this tragic event, denouncing police brutality. Mr. Kumar in turn was arrested by Punjabi police on July 27, 2007, for his participation in the demonstrations against police brutality and because of his article published in the newspaper *Ramgarhia Awaz*.

[7] Mr. Kumar was tortured. His fingerprints were taken, he was forced to sign a blank document and he was required to give his personal information to the police. He was then released on July 29, 2007.

[8] He immediately went to the hospital for treatment. He was hospitalized until August 2, 2007. It was then that he made the decision to seek refuge in New Delhi, and he left his home that very day, leaving behind his spouse and two children.

[9] In August 2007, the Punjabi police went to the applicants' home and threatened Mr. Kumar's family.

[10] Mr. Kumar left India on September 26, 2007, for the United States of America. He sought admission into Canada as a visitor on October 27, 2007, and filed his refugee protection claim in Montréal on November 6, 2007.

B. The IRB decision

[11] The IRB did not question Mr. Kumar's credibility and acknowledged that he had adduced evidence of some of the alleged facts. The IRB was satisfied that Mr. Kumar had written the article

denouncing police brutality in Mr. Singh's case. The IRB also considered that Mr. Kumar had been held in custody by Punjabi police because of his participation in demonstrations against police brutality and the publication of his article in the local newspaper.

[12] The IRB came to the conclusion that there was an internal flight alternative (IFA) for Mr. Kumar and his family. At paragraph 31 of its decision, the IRB wrote: "it is not objectively unreasonable to believe, or too severe to expect, that the claimant could move to Bombay and New Delhi. The claimant stated that he did not have any problems returning to India and relocating to one of these locations, aside from the fear he expressed of Punjab police officers".

[13] Consequently, the IRB found that the applicants were not Convention refugees or persons in need of protection.

III. Legislation

[14] Sections 96 and 97 of the IRPA read as follows:

Convention refugee	Définition de « réfugié »
<p>96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that</p>	<p>96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du</p>

fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
(ii) the risk would be faced by the person in every part of that country

fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes

and is not faced generally by other individuals in or from that country,

originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l’incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d’une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

IV. Issue and standard of review

A. Issue

[15] This application for judicial review raises a single issue:

- *Is the IRB’s decision that there is an internal flight alternative for the applicants reasonable?*

B. Standard of review

[16] In *Diaz v Canada (Minister of Citizenship and Immigration)*, [2008] FCJ No 1543 at para 24, the Court specified that the standard of review applicable to issues relating to an internal flight alternative is reasonableness. Thus, the Court must determine whether the IRB decision falls within a range of “possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

V. Positions of the parties

A. Position of the applicants

[17] The applicants contend that the IRB is imposing an excessive burden of evidence on them, namely, establishing the persecutors’ intention to pursue Mr. Kumar throughout India, when they need only raise a reasonable fear of persecution.

[18] In addition, Mr. Kumar wrote in his affidavit: “at different times, that different policemen threaten to me that they will teach me lessons in the future because I was doing help to detained people that it is why the problems is not just with my village police” (see the affidavit of Mr. Kumar, page 27 of the Applicant’s Record, paragraph 11.2). The applicants also cite the Human Rights Report for India, which specifies that Indian police forces “sometimes make arrests in retaliation for complaints of police abuse, in return for bribes, or due to political considerations or

the influence of powerful local figures” (see page 116 of the Applicant’s Record). Thus, they assert that the Human Rights Watch report applies to them and that Mr. Kumar’s fear extends to all of India. According to them, there is no internal flight alternative in India.

[19] The IRB also mentioned that “the chief of police was suspended and transferred to another location as a result of these incidents (arbitrary detention, torture and extortion of Sukhdev Singh by the local police)” (see paragraph 22 of the IRB decision). Given these facts, the applicants assert that the chief of police could move in order to find Mr. Kumar. Since the IRB failed to consider the possibility of a future threat by the chief of police in his community, the decision must be reviewed, according to the applicants.

[20] The applicants also rely on the documentary evidence filed before the IRB to establish that the Indian police forces have the means they need to find Mr. Kumar throughout India. This document specifies that the various police forces collaborate with each other, thanks to [TRANSLATION] “protected databases that can be shared at police stations at the district, state and national levels” (see the Applicant’s Record at page 135). This piece of documentary evidence also mentions the Polnet network and the dangers it represents for Mr. Kumar and his family. The applicants argue that if they move to Bombay or New Delhi, they will need to give their personal information to the new landlord of their building, or to the children’s school, and they could pass this information on to the police.

[21] According to the applicants, "... the Board has an obligation to comment on the information and why it rejected it, especially if it supports the applicant's position" (see *Waheed v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 329 at para 18).

[22] In addition, the IRB wrote, at paragraph 21 of its decision, that the respondent "replied...that he had not been threatened while he was in New Delhi". Nevertheless, Mr. Kumar argues that he gave a version that was fundamentally different from that related by the IRB. In his affidavit dated June 3, 2011, Mr. Kumar wrote: "I clearly stated that during my stay in Delhi, I was all the time in hiding life. The panel wrote that during that time I was there 'without being found or threatened by his agents of persecution'. It is true but the panel could not forget that during that period policemen again came to my home to find me, that they used abusive language for my wife and kids and threatens them". The applicant notes that he had to hide throughout his stay in New Delhi. Consequently, there is no internal flight alternative, according to the applicants.

B. Respondent's position

[23] The respondent contends that there is an internal flight alternative and that the applicants did not establish why it is impossible for them to seek refuge elsewhere in India.

[24] The respondent states that, according to Mr. Kumar's testimony, the IRB noted that he does not fit the profile of an active wanted militant and that the local police simply wanted to reprimand him for his participation in the demonstrations and for his article denouncing police brutality. The

respondent also notes the fact that Mr. Kumar sought refuge in New Delhi for nearly two months without being threatened or persecuted there and without an arrest warrant being issued against him.

[25] The IRB found that there was an internal flight alternative for Sikhs who are not known militants or those who allege a fear of local police outside the State of Punjab (see *Singh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 601 (*Singh*)). Based on that decision, the respondent alleges that the IRB decision is reasonable.

[26] The applicants also claim that the panel failed to consider Mr. Kumar's personal situation, as well as certain pieces of documentary evidence. In reply, the respondent contends that the IRB considered and analyzed the applicants' allegations. It clearly responded to them by carefully referring to the important elements of Mr. Kumar's account, his testimony at the hearing and the objective documentary evidence on the situation of Sikhs in India.

[27] The respondent also notes that the IRB is presumed to have considered all of the documentary evidence and that it is not obliged to comment on it specifically (see *Singh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 408 at paras 17-19). Thus, the IRB may accept the evidence that applies in Mr. Kumar's case (see *G.E.N.O. v Canada (Minister of Citizenship and Immigration)*, 2005 FC 367; *A.V. v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 900; and *Tekin v Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No 506). That is what the IRB did in this case.

[28] The respondent states that the applicants did not succeed in showing that the IRB erred in finding that there was an internal flight alternative for them in India.

VI. Analysis

- *Is the IRB's decision that there is an internal flight alternative for the applicants reasonable?*

[29] The IRB's conclusion that there is an internal flight alternative for the applicants in Bombay or New Delhi is reasonable.

[30] The Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*), set out the test that applies for determining whether there is an IFA. This test is reiterated at paragraph 12 of *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589:

...In my opinion, in finding the IFA, the Board was required to be satisfied, on a balance of probabilities, that there was no serious possibility of the appellant being persecuted in Colombo and that, in all the circumstances including circumstances particular to him, conditions in Colombo were such that it would not be unreasonable for the appellant to seek refuge there....

[31] An applicant cannot be a Convention refugee if there is an internal flight alternative in his or her country of origin (see *Rasaratnam* at page 710 and *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 605 (CA) at pages 614-615).

[32] At the hearing, the IRB gave Mr. Kumar the opportunity to make submissions on the internal flight alternative. Mr. Kumar answered “that the police officers would look for him everywhere in India. He would have to enroll his children in school and find a place to live. The police would be able to find him very easily as a result” (see paragraph 25 of the IRB decision).

[33] In their memorandum, the applicants argue that Mr. Kumar had to hide during his stay in New Delhi. They also allege that the police have the means to find them anywhere in India. The applicants also contend that the chief of police, Mr. Shivdev Singh Kahlon, could possibly wish to take revenge and try to find them if they were to return to India.

[34] The Court is of the opinion that the IRB did not err in finding that the applicants did not provide sufficient evidence to establish that the internal flight alternative is unreasonable. Thus, even if there is documentary evidence clearly showing that the police have the means to find a person anywhere in India, the applicants had to demonstrate that the local police had sufficient interest in trying to find them, even in Bombay or New Delhi. In this case, the applicants did not submit any objective evidence to support their claim that the local police were looking for them and that it will use the signed blank document to build a case against the applicant.

[35] As for their allegation that the chief of police in their community would possibly wish to find them, no evidence was submitted to establish this malicious intent. This is pure speculation on the part of the applicants, especially since the chief of police was reprimanded because of the treatment of Sukhdev Singh and not because of the publication of the applicant’s article.

[36] Once the IRB establishes an internal flight alternative, the burden of proof is then on the applicants. In this case, they did not submit evidence showing that it would be unreasonable for them to seek refuge in New Delhi or Bombay (Mumbai).

[37] The Court is of the opinion that the IRB's decision is reasonable and the internal flight alternative is a logical option under the circumstances.

[38] The IRB correctly cited *Singh* because it is analogous to this case. In that decision, the Court specified, at paragraphs 11 and 12, that “[t]he documentary evidence demonstrates that Sikhs who fear local police and who are of no interest to the central authorities can relocate to other parts of India. The RPD concluded that Mr. Balwant Singh could relocate to Delhi, as he had lived there for a period of ten months prior to coming to Canada”.

[39] Counsel for the applicants pointed out, at the hearing, the IRB's failure to comment on the documentary evidence that shows that the police have access to means for locating the applicants anywhere in India. The applicants claim that, given the importance of this evidence, the Court should intervene, based on *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425. We do not agree, because this evidence established the existence of means that the local police officers could have access to, and not the intention of those same local police officers to use these means specifically against the applicants. The case law of this Court is clear: the IRB is not obliged to comment on each piece of evidence submitted by the applicants (see *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598).

[40] The IRB's finding falls within the range of possible outcomes in the circumstances. The Court sees no reason to intervene.

VII. Conclusion

[41] The application for judicial review is dismissed because there is an internal flight alternative in Bombay (Mumbai) or New Delhi for the applicants. The applicants are therefore not Convention refugees or persons in need of protection under sections 96 and 97 of the IRPA.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. the application for judicial review is dismissed; and
2. there is no question of general interest to certify.

“André F.J. Scott”

Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3054-11

STYLE OF CAUSE: VARINDER KUMAR
ARUNA VERMA
ANCHAL VERMA
HANISH CHANDER VERMA
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 30, 2011

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

DATED: January 10, 2012

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