Federal Court  Cour fédérale

Date: 20211213

Docket: IMM-1226-21

Citation: 2021 FC 1386

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 13, 2021

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

ASHWINDER SINGH BHATTI, GURPREET KAUR BHATTI, MEHTAB SINGH BHATTI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ashwinder Singh Bhatti, the principal applicant, Gurpreet Kaur Bhatti, the principal applicant's spouse, and their son, Mehtab Singh Bhatti [the applicants], are seeking judicial

review of the February 1, 2021, decision of the Refugee Appeal Division [RAD] dismissing their appeal of a decision made by the Refugee Protection Division [RPD].

[2] In its decision, the RAD confirmed the RPD's determination that the applicants are neither Convention refugees nor persons in need of protection. The RAD concluded that the RPD erred in its analysis of an internal flight alternative [IFA]. However, after conducting its own analysis of the evidence, the RAD determined that the applicants have an IFA in Delhi.

[3] The applicants have not satisfied me that the RAD's decision is unreasonable under the applicable standard of review. Accordingly, the application for judicial review will be dismissed.

II. Background

[4] The applicants are citizens of India of Sikh faith, and they resided in Punjab. On October 4, 2016, they each received a multiple entry visitor's visa from United States authorities, valid for 10 years. From November 30, 2016, to January 1, 2017, they stayed in the United States.

[5] On September 8, 2017, they returned to the United States, and on December 18, 2017, they entered Canada. In January 2018, they claimed refugee protection in Canada. In his account attached to the Basis of Claim Form, and during his testimony before the RPD, Mr. Bhatti, the principal applicant, alleged a fear of the Punjab police. He stated that on August 13, 2017, police in Punjab pulled him over for a traffic stop while he was carrying passengers in his cab. One passenger fled when the police found weapons and ammunition in a bag left in the cab.

Mr. Bhatti says he was then arrested, detained and tortured by the police before being released three days later thanks to a bribe and his spouse's attempts to enlist the help of influential people. The principal applicant added that the police then demanded that he bring back the passenger who had fled from the cab during the police intervention by the following September 15. His family and his spouse's family have been receiving threats since the applicants left.

[6] The RPD heard the applicants on February 14, 2020. Mr. Bhatti confirmed that he was not the subject of an arrest warrant, had not been charged, and had not been the subject of a First Information Report (FIR) in India. On June 20, 2020, the RPD found that the applicants were neither Convention refugees nor persons in need of protection and therefore rejected their claim. It also found that the applicants have an IFA in Chandigarh, Haryana and Delhi.

[7] On February 1, 2021, the RAD dismissed the applicants' appeal and confirmed that they were neither Convention refugees nor persons in need of protection.

III. RAD decision

[8] Before the RAD, the applicants challenged only the RPD's finding on the first prong of the test for determining an IFA and raised no argument against the finding on the second prong of the test. The applicants disputed the RPD's finding as to the ability of the police to locate them in India and essentially argued that the documentary evidence was more nuanced than the RPD considered and that the RPD had erred by analyzing only a portion of the objective evidence. The applicants then pointed to certain forms that can be filled out by the police and argued that Indian authorities can fill out a form when, among other things, a person is searched.

They then argued that the actions of the Punjab police clearly demonstrated that they perceived the principal applicant as having close ties to the militants and that they would search for him given their interest in him.

[9] In its February 2, 2021, decision, the RAD determined that the applicants had a viable IFA in Delhi. The RAD reiterated the two-prong IFA test, namely (1) the claimant must establish a serious possibility of persecution or, on a balance of probabilities, a risk within the meaning of subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], in the proposed IFAs; and (2) the claimant must demonstrate that it would be objectively unreasonable for the claimant to seek refuge in the proposed IFAs.

[10] For the first prong of the test, the RAD concluded that the RPD had erred because the documentary evidence on India regarding communication between different police forces is more nuanced than the RPD considered in its reasons. The RAD determined that the RPD should have considered the impact of the Crime and Criminal Tracking Network and Systems (CCTNS) on the ability of the Punjab police to locate the applicants and should also have analyzed the interest and motivation of the Punjab police to locate the applicants in the proposed IFA.

[11] The RAD conducted its own analysis and looked at the motivation and ability of the Punjab police to search for the applicants in Delhi. The RAD concluded that the applicants had failed to demonstrate, on a balance of probabilities, the ability and motivation of the Punjab police to track them to Delhi:

> (1) It was not shown, on a balance of probabilities, that the Punjab police considered Mr. Bhatti to have close ties to the militants. The

> RAD concluded as such after noting that even though the police had the legal authority to hold him for much longer, it released Mr. Bhatti only three days after his arrest despite the fact that he was found in possession of weapons.
>
> (2) The harassment of Mr. Bhatti's mother and sister by the police in Punjab until the latter were bribed to leave demonstrates that the police are more interested in the applicants in order to extort them and does not establish that the Punjab police would expend energy and effort to track down the applicants in Delhi.
>
> (3) Although the tenant verification program is mandatory in all states in India, the documentary evidence does not support the conclusion that (1) verifications are actually carried out; (2) even though the CCTNS database is intended for data sharing and even though several police stations have it, the database would be effective in tracking down wanted individuals; and (3) Mr. Bhatti is in the CCTNS database since he was not considered to be an activist and since the applicants were able to get through the rigorous Indian airport screening processes using their true identities, even though they were assisted by a facilitator.

[12] The RAD noted that the applicants had not challenged the RPD's findings on the second prong of the test. However, the RAD reviewed this aspect of the RPD's decision and found no error. The RAD agreed with the RPD's finding that the applicants had not demonstrated that it would be unreasonable for them to seek refuge in Delhi. In fact, the RAD noted that, although the applicants had raised before the RPD the fact that they speak Punjabi and are of the Sikh faith, Punjabi is spoken in Delhi and the applicants do not wear any religious symbols. The RAD found that the applicants would therefore not be targeted by the rise of religious extremism in connection with those who do. The documentary evidence indicated that the majority of Sikhs in India are not subject to social discrimination and violence.

[13] The RAD concluded that the documentary and testimonial evidence did not demonstrate the existence of conditions that would endanger the lives and safety of the applicants in Delhi and that the RPD's determination of an IFA for the applicants and its final decision were correct.

IV. The parties' arguments before the Court

[14] The Court must determine whether it was unreasonable for the RAD to conclude that the applicants failed to demonstrate, on a balance of probabilities, the ability and motivation of the Punjab police to locate them in Delhi.

[15] The applicants submit generally that the RAD erred in its assessment of the applicants' case and had been overzealous. They allege that the RAD erred in finding that the narrative supported the inference that the Punjab police would lack the motivation to look for the applicants elsewhere in India. The applicants added that it was presumptuous for the RAD to argue that the principal applicant was not actually suspected of being a Sikh militant because he had been released.

[16] Next, the applicants argue that the RAD did not have any evidence to reduce the applicants' problems to extortion alone. The applicants submit that, even if it were only extortion, the police officers' insistence on locating the applicants with the family demonstrates their motivation to find them in the proposed IFA.

[17] The applicants argue that the RAD used only the parts of the objective evidence that supported its reasoning and that it specifically stated that it was giving great weight to certain

parts of the evidence without explaining why this evidence was more important. The applicants submit that in the presence of nuanced evidence, the RAD should have considered all the evidence in order to justify its decision.

[18] In this regard, the applicants point out that the RAD did not have any relevant information to speculate about the actions of the police officers and why they would not have entered the principal applicant into the database, nor did it have any information about the administrative procedures for entering individuals into the database. According to the applicants, the RAD erred in failing to rely on reasonable arguments.

[19] The applicants add that the argument they raised in their appeal memorandum was not discussed by the RAD and go on to state that one of the forms identified in Tab 10.13 of the National Documentation Binder, submitted as Exhibit B, is a search and seizure form. They allege that, considering that the principal applicant was seized, it is reasonable to believe that such a form was completed and added to the CCTNS database. The applicants argue that the RAD erred in not reviewing this information.

[20] The applicants state that the RAD referred to the fact that the applicants were able to leave the airport and get through security, thereby confirming there was no information in the CCTNS database, yet did not consider the impact of the facilitator’s assistance.

[21] The applicants conclude that the RAD’s decision is seriously flawed and thus fails to meet the requirements of justification, intelligibility and transparency.

[22] The Minister responds that the applicants have not shown that the RAD made an error that would make the decision unreasonable and that their application must therefore be dismissed. He adds that the RAD's decision is reasonable and contains no significant error that would justify allowing the application for judicial review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100 [*Vavilov*]).

[23] The Minister sets out the principles of determining an IFA, and argues that the RAD's conclusion is entirely reasonable. He notes that the applicants have failed to establish the interest and desire of the Punjab police to pursue them throughout India and that there is nothing to prevent the applicants from relocating to Delhi.

[24] The Minister notes that the existence of an IFA for a claimant is fatal to any claim for refugee protection. He adds that when the panel raises an IFA, principal claimants must demonstrate that they would be in danger anywhere in their country and could not reasonably find refuge in the proposed location. In the Minister's view, it was reasonable for the RAD to conclude that the applicants had failed to make this demonstration.

V. Decision

[25] I agree with the parties that it is appropriate to review the RAD's decision against a standard of reasonableness (*Okohue v Canada (Citizenship and Immigration)*, 2016 FC 1305 at paras 9–10; *Vavilov*, 2019 SCC 65 at paras 16–17 and 23–25).

[26] Where the reasonableness standard applies, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The Court's focus "must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* au para 83) 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). It is not for this Court to substitute its preferred outcome if "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and [if] it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

[27] In *Vavilov*, paragraph 125 states that "[i]t is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must also refrain from 'reweighing and reassessing the evidence considered by the decision maker': CHRC, at para. 55; see also Khosa, at para. 64; Dr. Q, at paras. 41-42".

[28] It is also well established that the decision-maker is presumed to have weighed and considered all of the evidence presented to it unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1). Failure to mention a particular piece of evidence does not mean that it has been excluded, and the decision maker is not required to refer to all the evidence that supports the decision maker's conclusions. It is only when the panel is silent about evidence that clearly favours a contrary conclusion that the Court can intervene and infer that the panel failed to consider conflicting evidence when

making its finding of fact (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (FCTD) [*Cepeda-Gutierrez*] at paras 16–17; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Newfoundland Nurses*]).

[29] Where the RAD finds that a claimant has an IFA, the burden is on the claimant to demonstrate, on a balance of probabilities, that the claimant will be at risk anywhere in their country and could not reasonably be expected to find refuge there. The IFA in this case is Delhi.

[30] Since the applicants have not challenged the RAD's finding on the second prong of the test, the only issue in dispute is whether the RAD erred in finding that the applicants failed to establish, on a balance of probabilities, that they would be at risk anywhere in the country and could not reasonably seek refuge in Delhi.

[31] However, the applicants' arguments do not reveal any errors on the part of RAD.

[32] First, the applicants argue that it was presumptuous for the RAD to infer that the principal applicant was not suspected of being a Sikh activist, but they do not explain how the RAD's reasoning is unreasonable. This finding of the RAD is a central one, and it impacts certain other findings. The applicants have not persuaded me that the RAD's inferences from the facts related by the applicants are unreasonable.

[33] The applicants do not dispute that Indian law allows the police to detain people for long periods of time, or that Indian authorities take the threat of terrorism very seriously, or that there are special provisions regulating the possession of weapons or explosives. Yet, despite this reality, the principal applicant was released after three days, on payment of bribes and thanks to the intervention of important people. It was not unreasonable for the RAD to infer that the treatment suffered by the principal applicant was not that reserved for those suspected by the police of being militants, or those close to them. This finding also affected the assessment of the police's behavior towards the family that remained in Punjab.

[34] Second, the RAD's failure to mention each piece of evidence does not mean that it was ignored (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24 citing *Newfoundland Nurses* at para 16). The RAD is presumed to have considered the evidence, and it must be determined whether the omitted evidence is evidence that clearly favours an opposite conclusion, thereby allowing the Court to intervene. In this case, there is no indication that this is the case. Finally, it was up to the RAD to weigh the various pieces of evidence and decide what weight to give them.

[35] As to applicants' final argument that the member did not consider the facilitator's assistance at the airport, specifically that the facilitator had an impact on the applicants' passage through customs, again, the applicants merely state that this conclusion is unreasonable. They do not refer to any specific evidence. The RAD considered the facilitator's assistance in its decision at paragraph 25, but simply did not make the findings that the applicants hoped for.

VI. Conclusion

[36] As Justice Roussel correctly pointed out in *Singh v Canada (Minister of Citizenship and Immigration*), 2021 FC 459 at paragraph 23, the RAD's IFA findings are essentially factual and are based on its assessment of all the evidence. The RAD's findings are within its area of expertise and require a high degree of deference from this Court. Based on all of the evidence and on a balance of probabilities, the RAD could reasonably conclude that the applicants failed to establish that they are at risk in Delhi. It is not the role of this Court to reweigh and balance the evidence to reach a conclusion favourable to the applicants. The role of the Court is to assess whether the decision bears the hallmarks of reasonableness (*Vavilov* at paras 99 and 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12at para 59). The Court finds that it does.

[37] The applicants have not satisfied the Court that it was unreasonable for the RAD to conclude that the applicants failed to establish, on a balance of probabilities, the ability and motivation of the Punjab Police to locate them in Delhi. It was therefore reasonable for the RAD to conclude that the applicants failed to establish a serious possibility of persecution or, on a balance of probabilities, a risk within the meaning of subsection 97(1) of the Act in the proposed IFA.

JUDGMENT in IMM-1226-21

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed; and

2. No question is certified.

"Martine St-Louis"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1226-21
STYLE OF CAUSE:	ASHWINDER SINGH BHATTI, GURPREET KAUR BHATTI, MEHTAB SINGH BHATTI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC, VIA VIDEOCONFERENCE (ZOOM)
DATE OF HEARING:	DECEMBER 6, 2021
JUDGMENT AND REASONS:	ST-LOUIS J.
DATED:	DECEMBER 13, 2021

APPEARANCES:

Sohana Sara Siddiki	FOR THE APPLICANTS
Édith Savard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sohana Sara Siddiki, Attorney Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT