

Federal Court



Cour fédérale

**Date: 20230502**

**Docket: IMM-5751-22**

**Citation: 2023 FC 636**

**Ottawa, Ontario, May 2, 2023**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**BALJINDER SINGH, PUNITA RANI,  
HARSIMRAN SINGH & TANUR KAUR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants, Mr. Singh (Principal Applicant), his spouse Ms. Rani (Associate Applicant) and their two minor children, are citizens of India. They seek judicial review of a May 31, 2022 decision of the Refugee Appeal Division (RAD) confirming the refusal of their refugee claims by the Refugee Protection Division (RPD). The RAD found that the Applicants have a viable Internal Flight Alternative (IFA) in Mumbai or Bengaluru and concluded that they

are neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*.

[2] The Applicants submit that the RAD erred in failing to reasonably consider the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* (Gender Guidelines) and the Associate Applicant's treatment at the hands of the local police force.

[3] For the reasons that follow, I find that the Applicants have not demonstrated that the RAD's IFA analysis is unreasonable and will dismiss this application for judicial review.

#### I. Background

[4] The Applicants fear persecution by the police in their hometown in Punjab. The Associate Applicant also fears gender-based persecution by the police.

[5] The Applicants' fear of persecution stems from the alleged political activities of a cousin whom the Principal Applicant has supported in interactions with the local police, including payment of a bribe to release the cousin from custody in April 2018. The Principal Applicant states that the police raided the family home in June 2018 and that, on July 20, 2018, he was arrested at home and taken to the police station. There, he was questioned and tortured until his release the following day, again after payment of a bribe. The Principal Applicant was also required to report to the police every month until he produced his cousin.

[6] In mid-August 2018, the Principal Applicant went to Delhi and contacted an agent who sheltered him and assisted the Applicants in obtaining visas for Canada. During his absence, the police went to his home and questioned the Associate Applicant. She informed the police that the Principal Applicant was looking for the cousin and was ordered to produce her husband as soon as possible. The police assaulted the Associate Applicant and threatened her with sexual abuse.

[7] In November 2018, the Associate Applicant and the two children joined the Principal Applicant in Delhi. The family arrived in Canada on January 17, 2019.

[8] The RPD rejected the Applicants' claims. While the RPD identified some credibility concerns with the Applicants' allegations, the panel ultimately accepted that the Applicants faced a risk of harm from the local police. The RPD found, however, that the Applicants had viable IFAs in Mumbai or Bengaluru.

[9] The Applicants appealed the RPD's decision to the RAD, arguing that the RPD's assessment of both prongs of the IFA test, particularly with respect to the ability of police forces in India to locate them throughout India using the Crime and Criminal Tracking Network System (CCTNS) thereby putting their safety at risk in the IFAs.

## II. Decision under Review

[10] The RAD first noted that the RPD identified some credibility concerns but that they were not determinative to the Applicants' refugee claims because of the RPD's IFA findings.

[11] The RAD then confirmed the RPD's IFA analysis and dismissed the appeal. The RAD concluded first that the Applicants' agents of persecution had neither the means nor the motivation to search for and locate the Applicants in either of the IFAs. The Principal Applicant's arrest was carried out extra-judicially and there was insufficient evidence to establish that the Principal Applicant's name would appear in the CCTNS or any other police database if searched by the police in Mumbai or Bengaluru. The Applicants themselves had not been accused of committing a crime and the issues they faced were local to their hometown.

[12] Second, the RAD found that the RPD had addressed the adult Applicants' education and work experience in its consideration of the second prong of the IFA test. The RAD concluded that it would not be objectively unreasonable in all the circumstances for the Applicants to relocate to Mumbai or Bengaluru.

### III. Analysis

[13] The sole issue raised in this application is whether the RAD reasonably considered the Gender Guidelines in its decision. It follows that I will review the RAD's decision for reasonableness against the Applicants' submissions regarding this issue (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23).

[14] My starting point is the Applicants' appeal submissions to the RAD. In those submissions, the Applicants raised no issue with respect to the treatment of the Associate

Applicant by the RPD. In fact, the Applicants indicate that the RPD took the Guidelines into account. They state (Appeal Submissions at para 21):

21. The credibility issues identified by the RPD were as follows:
  - a. The Associate Appellant testified that in October 2018, while the Principal Appellant was in hiding, three (3) policemen came to her home “slapped her two or three times, that they were abusive” and that they tortured her. Further, the Officers insinuated that they want to take the Associate Appellant to the station and sexually abuse her.
    - i. This incident was not part of the Appellants BOC narrative despite updates being made to it until the day before the hearing. Despite this, taking Gender-Guidelines into account, the RPD stated that “the panel will give the Associate Claimant the benefit of the doubt and note that her explanations relating to the police assault are plausible as described.”

[15] The Respondent submits, and I agree, it is not appropriate for the Applicants to impugn the RAD’s decision in this application based on an issue they had not previously raised. A new argument not argued before the RAD should not be advanced for the first time with the Court on judicial review (*Dhillon v Canada (Citizenship and Immigration)*, 2015 FC 321 at paras 23-24; *Odekunle v Canada (Citizenship and Immigration)*, 2022 FC 786 at paras 31-32). The RAD commits no reviewable error in omitting to consider issues that were not raised before it, nor can issues in the RPD’s decision that were not raised on appeal be used to challenge a RAD decision (*Obalade v Canada (Citizenship and Immigration)*, 2021 FC 1030 at para 11). The Applicants’ submission that the RAD did not sufficiently consider the Guidelines and the way in which the Associate Applicant was treated by the police is not persuasive. Similarly, their argument that the

RPD did not sufficiently consider this aspect of her claim is an argument that should have been put before the RAD. It is not now a basis for the Court's intervention.

[16] I would add that the present case is distinguishable on its facts from the situation and decision of the RPD addressed by Justice Pentney in *Pardo Quitian v Canada (Citizenship and Immigration)*, 2020 FC 846 (*Pardo Quitian*). In that case, the RPD failed to consider the issue of gender-based persecution (*Pardo Quitian* at paras 53-54). Not only was the issue properly before the Court for its consideration in *Pardo Quitian*, but the RPD in this case considered and accepted the Associate Applicant's gender-based claim, acknowledging the Gender Guidelines and applying them to her evidence. The RAD in turn acknowledged the Associate Applicant's fear of gender-based persecution by the local police officers.

#### IV. Conclusion

[17] The Applicants have raised no reviewable error in the RAD's analysis of the viability of two IFAs in India for the Applicants and, accordingly, I will dismiss the application.

[18] No question for certification was proposed by the parties and none arises.

**JUDGMENT IN IMM-5751-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5751-22

**STYLE OF CAUSE:** BALJINDER SINGH, PUNITA RANI, HARSIMRAN SINGH & TANUR KAUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 25, 2023

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** MAY 2, 2023

**APPEARANCES:**

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