

Federal Court



Cour fédérale

**Date: 20230616**

**Docket: IMM-5906-22**

**Citation: 2023 FC 851**

**Ottawa, Ontario, June 16, 2023**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**AGAYAPAL SINGH  
RAJWANT KAUR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] The Applicants are citizens of India who operated a farm in Punjab. According to their Basis of Claim Form, one of their farm-hands eloped with SK in early March 2018. SK was a member of the Dalit caste and the daughter of another employee. SK's family, roused by Congress Party supporters, brought police and neighbours to the Applicants' farm and demanded they produce the couple. Mr. Singh, the Principal Applicant, was arrested, detained and tortured

until his release upon payment of a bribe. Thereafter, the Applicants were subjected to regular police visits and members of the Dalit community attacked their farm on two occasions. In September 2018, the Applicants fled to Canada and sought refugee protection, alleging fear of the police, the Congress Party and the local Dalit community.

[2] The Applicant's refugee claim was refused by the Refugee Protection Division (RPD) on January 18, 2022. The RPD found that the Applicants have a viable Internal Flight Alternative (IFA) in Mumbai. The panel noted that there was no evidence that the Principal Applicant had been charged with any offence or that he existed as a wanted person in the Crime and Criminal Network and Tracking Systems (CCTNS) database. The RPD concluded that the police did not therefore have the means to pursue the Applicants to Mumbai and, further, that neither the police nor the local Dalit community (including Congress party members/supporters) were motivated to find them in Mumbai. The RPD also concluded that it would be reasonable in all the circumstances for the Applicants to relocate to the proposed IFA.

[3] The Applicants appealed the RPD's decision to the Refugee Appeal Division (RAD). They challenged the RPD's assessment of both prongs of the IFA test, particularly its assessment of the ability of the police to locate them throughout India using the CCTNS and the continued motivation of their agents of persecution to find and harm them.

[4] The Applicants now seek judicial review of a June 2, 2022 decision of the RAD confirming the refusal of their refugee claim by the RPD. The RAD found that the Applicants have a viable IFA in Mumbai 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.

[5] For the reasons that follow, I find that the RAD's IFA analysis is reasonable and will dismiss this application for judicial review.

## II. Decision under review

[6] The RAD confirmed the RPD's IFA analysis and dismissed the appeal.

[7] The RAD concluded first that the police do not have the means to pursue the Applicants to Mumbai in the absence of any charge or First Information Report concerning the Principal Applicant. With respect to the Applicants' argument that they could be traced through their *Aadhaar* cards, the RAD found that the tenant verification system in Mumbai is inadequate and stale-dated. The RAD stated that there is "no access to *Aadhaar* data in any police database, including CCTNS" (quoting from the documentary information for India and a 2021 statement from the Executive Director of the South Asia Terrorism Portal). The RAD also concluded that the Dalit community lacks the means or motivation to find the Applicants in Mumbai.

[8] Second, the RAD found that it would not be objectively unreasonable in all the circumstances for the Applicants to relocate to Mumbai. The panel focussed on the Applicants' personal circumstances, acknowledging their education and work experience in farming, the presence of a significant Sikh population, the absence of social safety nets in Mumbai such as temporary stays at acquaintances' houses, and their limited English and Hindi language skills.

III. Analysis

[9] The Applicants raise two grounds of review. They argue that the RAD (1) failed to assess the means and motivation of supporters of the Congress Party to locate them in Mumbai; and (2) disregarded the fact they would be required to live in hiding in Mumbai because they could not inform their family of their whereabouts (*Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 (*Ali*)).

[10] Both grounds of review are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32). The Court must determine whether the rationale and outcome of the decision at issue is transparent, intelligible and justified and will intervene only if it is satisfied that any shortcomings in the decision are sufficiently central or significant to render it unreasonable (*Vavilov* at paras 15, 87, 100).

[11] The Applicants first submit that the RAD's decision must be set aside because the panel failed to consider the means and motivation of the Congress Party to locate them in Mumbai.

[12] I do not agree. The Applicants did not submit that they fear direct reprisals from the Congress Party and its supporters. Their fear centred on the police and its relationship with the Party:

The [Principal Applicant] has dared offend the Congress party by starting to support the Aam Aadmi Party. The congress party have influenced the police in apprehending and persecuting the [Principal Applicant].

[13] The appeal submissions describe the ability of police forces in India to detain people with impunity and to track individuals throughout the country. The Applicants made no argument and provided no evidence that members of the Congress Party or the Party itself had the means or motivation to pursue them to the IFA.

[14] The RAD clearly addressed the Applicants' submission and the Congress party's involvement in inciting the police to action, concluding that "the police – even if they were galvanized by the Dalit community and influenced by local Congress Party activists – do not have the means to pursue the [Applicants] to Mumbai". Accordingly, the Applicants have raised no reviewable error in the RAD's analysis of the first prong of the IFA test.

[15] The starting point for my analysis of the Applicants' second ground of review is the fact that they did not argue on appeal that they would have to conceal from their family the fact that they had returned and were living in Mumbai. I agree with the Respondent that it is not appropriate for the Applicants to impugn the RAD's decision in this application based on an issue and arguments they had not previously raised (*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 Applicants' argument that the RAD itself "opened the door" to this argument is without merit. The RAD simply recounted their testimony that, after they left the village, there were no further incidents or harassing visits from the Dalit community, although inquiries about their whereabouts were made.

[16] In any event, the Applicants have not raised a reviewable error in the RAD's analysis for two reasons. First, their argument assumes that the agents of persecution have the means to track the Applicants to Mumbai, contrary to the RAD's finding. Second, the Applicants provided no evidence that members of the Dalit community would threaten their family members should they refuse to disclose the Applicants' whereabouts. The Applicants emphasize that members of the Dalit community had gone to the home of the Principal Applicant's father and hit him in an attempt to locate the Applicants before they left India. However, there is no evidence in the record of visits, threats or assaults from April 2018 onwards. The facts and evidence before the RAD differ markedly from those in *Ali*, where the Court found (at para 50) that the applicants would have to hide from family members should they be required to return to Pakistan "[g]iven the dangers posed by knowledge of their whereabouts, or even their return to Pakistan". There is no evidence in the present case that the Applicants' agents of persecution pose any threat to family members (*Kodom v Canada (Minister of Citizenship and Immigration)*, 2023 FC 305 at paras 12-14).

#### IV. Conclusion

[17] In summary, the RAD's finding of a viable IFA for the Applicants in Mumbai, India is reasonable in light of the evidence and the accepted test for a viable IFA. Its analysis is clear and comprehensive and addresses the issues raised in the Applicant's appeal submissions. As a result, the application will be dismissed.

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

**JUDGMENT IN IMM-5906-22**

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

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

"Elizabeth Walker"

---

Judge

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

**DOCKET:** IMM-5906-22

**STYLE OF CAUSE:** AGAYAPAL SINGH, RAJWANT KAUR v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MAY 10, 2023

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** JUNE 16, 2023

**APPEARANCES:**

M<sup>e</sup> Mark. J. Gruszczynski FOR THE APPLICANTS

M<sup>e</sup> Sean Doyle FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Canada Immigration Team FOR THE APPLICANTS  
Barristers and Solicitors  
Westmount, Quebec

Attorney General of Canada FOR THE RESPONDENT  
Montréal, Quebec