

Federal Court



Cour fédérale

Date: 20230921

Docket: IMM-5153-22

Citation: 2023 FC 1269

Ottawa, Ontario, September 21, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

**KULWINDER SINGH
MANDEEP KAUR
GURWINDER SINGH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants seek judicial review of the dismissal of their refugee claim by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. For the reasons below, the application will be dismissed, as the argument they now raise before this Court was not one that was put before the RAD.

[2] The applicants' claim for refugee protection arises from a dispute between the principal applicant, Kulwinder Singh, and his uncle over family land in Punjab, India. In the context of that dispute, the uncle enlisted thugs to beat Mr. Singh, and used his connections to have Mr. Singh detained, interrogated, and tortured by local police, who accused him of having links with Sikh militants.

[3] The Refugee Protection Division [RPD] rejected the applicants' refugee claim, finding the applicants were not Convention refugees or persons in need of protection. The RPD concluded there was no nexus between the applicants' claim and a Convention ground, since the police were only acting as agents for the uncle, and the risk from the uncle was simply related to the land dispute. The RPD further found the applicants would not face a risk to life or a risk of cruel and unusual treatment or punishment upon return to India if Mr. Singh gave up his right or entitlement to the family property. The RPD considered it was reasonable to expect Mr. Singh to give up his claim to land to free himself from the risk of harm from the uncle, noting that the applicants would not be deprived of the right to earn a basic living if they did so. The RPD also addressed Mr. Singh's assertion that his uncle would seek to kill him even if he gave up his claim to the land. Referring to the evidence before it, including the uncle's statements that Mr. Singh's problems would come to an end if he signed the land over, the RPD found the uncle would not be motivated to harm Mr. Singh if he gave up his claim to the land.

[4] On appeal to the RAD, the applicants argued the RPD erred in concluding that abandoning their claim to the property was a reasonable solution to their fear of persecution. They claimed the right to own and enjoy property was protected as a fundamental human right,

citing Article 17 of the *Universal Declaration of Human Rights*, GA Res 217 A (III), UN Doc A/810, at 71 (1948) and sections 1 and 2 of the *Canadian Bill of Rights*, SC 1960, c 44. They submitted the RPD erred in imposing a solution that would require them to forgo their rights to property, and that given their intention to “seek and enjoy their property” upon return to India, they would reasonably face a serious risk to their lives and safety.

[5] The RAD dismissed the applicants’ appeal. It found the RPD was correct to conclude that in the applicants’ circumstances, it was reasonable for Mr. Singh to give up his claim to the land that was at the heart of the dispute with the uncle, and that the applicants would not face a forward-facing risk if Mr. Singh did so. The RAD rejected the applicants’ arguments regarding the right to the enjoyment of property, referring to jurisprudence that recognizes that a refugee claimant can reasonably be expected to forgo claims to land: see *Malik v Canada (Citizenship and Immigration)*, 2019 FC 955 at paras 19–30; *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at paras 7, 16–20. The RAD went on to agree with the RPD that there was no forward-looking risk if Mr. Singh relinquished his claim:

While I do not doubt that in some situations, individuals may consider the acquiring of more land to increase their social standing and status, based on all of the evidence before me, I do not find that the Principal Appellant has established that if he were to sell the disputed property to his uncle or to hand it over, that his uncle would continue to pursue him or the other Appellants in order to harm them on the ground that it has become an issue of honour or to ensure that neither he nor his son would lay claims to it ever again in the future.

[6] On this application for judicial review, the applicants do not advance the rights-based argument they presented to the RAD. Rather, they assert that their situation had gone beyond a simple land dispute, since Mr. Singh was accused by the police of supporting Sikh militants.

They point to steps taken by the police after their arrival in Canada, including notices to appear and visits looking for Mr. Singh, which occurred even though the uncle had *de facto* control of the land. They argue the RAD “failed to place enough weight on the continued persecution from the police as opposed to the dispute over the land.”

[7] The primary difficulty with this argument is that the applicants did not make the argument to the RAD. As noted above, the applicants’ appeal to the RAD was entirely based on their argument that the RPD should not have considered it reasonable to require them to forgo their claim to the land. At no point did the applicants argue before the RAD that even if they did forgo their claim, they would remain at risk because the situation had gone beyond a land dispute. This argument was made to the RPD, who rejected it, and that conclusion was not challenged before the RAD.

[8] As the Federal Court of Appeal has recently confirmed, the reasonableness of an administrative decision cannot normally be impugned on the basis of an issue not put to the decision maker: *Gordillo v Canada (Attorney General)*, 2022 FCA 23 at para 99; see also *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 73; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 127–128. It is untenable for the applicants to argue that the RAD failed to put enough weight on arguments or facts that were simply not raised before them.

[9] The applicants argue that the RAD undertook an independent assessment of the evidence and concluded there was no forward-looking risk if Mr. Singh abandoned his claim to the land.

Since the RAD made its own finding on the issue, they argue they should not be precluded from challenging that finding on judicial review. This position would be more persuasive if the RAD had made a new or different finding than the RPD or raised a new issue. Here, the RAD noted Mr. Singh's allegations before the RPD that he would be at risk even if he were to give up his land. It then set out the RPD's findings rejecting this allegation and noted its agreement with them. In my view, the RAD indicating that it agrees with the RPD on an issue that is not the subject of an appeal does not allow an applicant to raise new challenges on judicial review on that issue.

[10] In any event, even if the Court were to permit the applicants to re-raise this argument that was made before the RPD but not before the RAD, the Court concludes that the applicants have not met their onus to show the RAD's decision is unreasonable: *Vavilov* at paras 99–100.

[11] The applicants' primary argument is that the police show continued interest in Mr. Singh even though the uncle is in possession of the land, and that this demonstrates that the issue has gone beyond a land dispute, so relinquishing the claim to the land would not remove the risk. As the RPD concluded, and the RAD agreed, the preponderance of the evidence was that the uncle's sole interest was related to the land, and that the police were simply acting at the uncle's request. The RPD and RAD both considered the evidence regarding the continued police interest in Mr. Singh, and concluded that it was "connected to the efforts of the uncle to have him forego this property."

[12] This finding is supportable and reasonable on the evidence. The applicants' argument that the RAD should have put more weight on the notices to appear and continued police visits, rather than on the evidence indicating the dispute was about the land and would end when the claim to the land was relinquished, essentially asks this Court to reassess and reweigh the evidence and reach its own conclusions. That is not the role of the Court on judicial review, which is limited to assessing whether the decision is lawful, justified, transparent, and intelligible: *Vavilov* at paras 15, 75, 125–126.

[13] The application for judicial review will therefore be dismissed. Neither party proposed a question for certification, and I agree that none arises in the matter.

JUDGMENT IN IMM-5153-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5153-22

STYLE OF CAUSE: KULWINDER SINGH ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: APRIL 13, 2023

JUDGMENT AND REASONS: MCHAFFIE J.

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APPEARANCES:

Viken G. Artinian

FOR THE APPLICANTS

Erin Morgan

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates
Montreal, Quebec

FOR THE APPLICANTS

Attorney General of Canada
Montreal, Quebec

FOR THE RESPONDENT