

Federal Court



Cour fédérale

Date: 20240222

Docket: IMM-12951-22

Citation: 2024 FC 291

Ottawa, Ontario, February 22, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**PALWINDER SINGH
AMANPREET KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant [PA], Palwinder Singh and his spouse, Amanpreet Kaur, are citizens of India who have sought refugee protection, pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. They report that they fear

persecution at the hands of the Punjabi police because of a perceived connection to Sikh militants.

[2] The Refugee Protection Division [RPD] found that there was no serious possibility of persecution in New Delhi and that the Applicants had an internal flight alternative [IFA] in New Delhi. The RPD concluded the Applicants were neither Convention refugees nor persons in need of protection.

[3] In a decision dated November 21, 2022, the Refugee Appeal Division [RAD] refused the Applicants' appeal. In doing so, the RAD concluded aspects of the Applicants' narrative were not credible and, on the basis of credibility alone, found the appeal could be dismissed. Nonetheless, the RAD also considered the RPD's IFA finding and alternatively found the RPD had correctly held it to be unlikely that the Applicants would face a serious possibility of harm in New Delhi and that it was reasonable for the Applicants to relocate to the IFA.

[4] The Applicants apply for judicial review of the RAD's decision pursuant to subsection 72(1) of the IRPA, raising two issues:

- A. Did the RAD breach procedural fairness by making credibility findings without giving the Applicants an opportunity to respond?
- B. Did the RAD reasonably conclude that it was unlikely the Applicants would face a serious possibility of persecution within the IFA?

[5] The Application is granted. I am of the opinion that the RAD breached procedural fairness in considering credibility without providing the Applicants with notice and an opportunity to respond. My reasons follow.

II. Background

[6] The PA reports that his cousin was arrested in November 2015 after denouncing police conduct towards members of the Sikh community. Upon being released, the cousin disappeared and the police turned their attention to the PA in an effort to find the cousin.

[7] The PA states he was arrested, detained and questioned about his cousin's activities and whereabouts. He reports that he had no information to provide to the police, was subjected to torture, and was released after a bribe was paid by influential members of the community. The PA reports that the police harassment continued until a second bribe was paid.

[8] The PA advises he met with a lawyer, who dissuaded him from taking legal action against the police. However, the police, having become aware of the meeting, arrested the Applicants. The PA's spouse was sexually abused and the PA was told he would be killed if he pursued legal action. After advising that legal action would not be pursued, the Applicants were released and the PA was instructed to return to the police station once a month to provide information about his cousin's activities and the activities of other Sikh militants.

[9] In August 2016, the Applicants left their village for a different location in Punjab before arriving in Canada in January 2017. The Applicants initially believed that they would return to

India but were dissuaded when relatives advised them that the police were asking about them, alleging that they joined the insurgency, and threatening to kill them. They made their claim for refugee protection in February 2018.

[10] Finding the Applicants had a viable IFA in New Delhi, the RPD refused the claim. Credibility was not in issue before the RPD.

III. Decision under Review

[11] On appeal, the RAD found that the RPD's credibility assessment was deficient. The RAD identified "several major incoherencies in the evidence" and concluded the Applicants' testimony was not credible, stating that it "would therefore dismiss the appeals for that reason alone." The RAD further stated that "if I am wrong in my assessment of the [Applicants'] credibility, I would still dismiss the appeals because I am satisfied, based on the evidence before me, that the RPD's analysis on IFA is entirely correct."

[12] The RAD considered the two part IFA test as set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA) at 710 and found that it was unlikely that the Applicants would face a serious possibility of harm within the IFA because it did not appear that the Punjabi police would have an interest to pursue the Applicants approximately six years after they left the country. In considering part two of the test, the RAD found that, in all of the circumstances, it was reasonable for the Applicants to relocate to the IFA.

IV. Preliminary Matter - Style of Cause

[13] The Application has identified the Respondent as the Minister of Immigration, Refugees and Citizenship Canada, the name that is commonly used to refer to the Respondent. However, the Respondent is identified in statute as the Minister of Citizenship and Immigration and should be so identified in the style of cause (rule 5(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 and s 4(1) of the IRPA). The style of cause is amended accordingly (rule 76 of the *Federal Courts Rules*, SOR/98-106).

V. Analysis

[14] Issues of fairness are reviewed on a standard that is best described as correctness. Where an issue of fairness arises, a reviewing Court must consider all of the circumstances in determining whether the procedure was fair (*Verma v Canada (Citizenship and Immigration)*, 2022 FC 1167 at para 12; *Dunkley v Canada (Citizenship and Immigration)*, 2022 FC 892 at para 19).

[15] Credibility was not in issue before the RPD. The RPD concluded that the determinative issue was the availability of an IFA, and in doing so, accepted that the Applicants had established a future risk of persecution at the hands of the Jalandar district police. On this basis, the only issue the Applicants raised before the RAD was whether the RPD's IFA finding was correct.

[16] In conducting its review on appeal, the RAD raised credibility concerns that were not identified or pursued by the RPD. In coming to a different and determinative view on credibility, the RAD did not give notice to the Applicants.

[17] The RAD is not bound by the findings of the RPD on appeal, and it remains open to the RAD to render new or different substantive findings. However, where the RAD chooses to pursue a matter not in issue before the RPD and not raised on the appeal, fairness requires the RAD to give notice to the parties and provide the opportunity to make submissions (*Husian v Canada (Citizenship and Immigration)*, 2015 FC 684 at para 10; *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 at paras 25-26).

[18] The Respondent acknowledges a potential breach of fairness but relies on the RAD's alternative finding – the Applicants have a viable IFA in New Delhi – in submitting the RAD's credibility finding was not determinative. I disagree.

[19] The RAD's failure to provide the Applicants an opportunity to address credibility concerns that the decision-maker characterizes as sufficient on their own to dismiss the appeal is a breach of fairness that requires intervention. The RAD's reasons also suggest that the negative credibility finding affected and influenced the brief IFA analysis.

[20] In considering the first prong of the IFA test, the RAD focuses on the evidence of police motivation to locate the Applicants in the IFA. The RAD dismisses evidence of motivation in a single sentence, stating, "I do not find that the evidence that this may be the case to be at all

persuasive even if that [is] what [the] police told their relatives.” The RAD clearly doubts the evidence of the Applicants’ relatives.

[21] Similarly, in addressing the reported sexual assault of the PA’s spouse, the RAD explicitly questions the truthfulness of the allegation – “[t]he allegation that the Associate Appellant was sexually assaulted by the Punjabi police, assuming that it is true, does not establish a serious possibility of further persecution...” in the IFA (emphasis added).

[22] The Applicants were not given an opportunity to address the RAD’s credibility concerns and those concerns were reflected in the RAD’s IFA analysis. In the circumstances, the process was unfair.

VI. Conclusion

[23] For the above reasons, the Application is granted. The parties have not identified a question of general importance and none arises.

JUDGMENT IN IMM-12951-22

THIS COURT'S JUDGMENT is that:

1. The Application is granted.
2. The style of cause is amended to name the Respondent as The Minister of
Citizenship and Immigration.
3. The matter is returned for redetermination by a different decision-maker.
4. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12951-22

STYLE OF CAUSE: PALWINDER SINGH, AMANPREET KAUR v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 8, 2024

JUDGMENT AND REASONS: GLEESON J.

DATED: FEBRUARY 22, 2024

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