Federal Court Cour fédérale

Date: 20240227

Docket: IMM-10853-22

Citation: 2024 FC 317

Ottawa, Ontario, February 27, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

AVTAR SINGH and MANSIMRAN KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal Applicant, Avtar Singh [Principal Applicant], and his wife, Mansimran Kaur [Secondary Applicant], are citizens of India who have resided in Canada since 2019. They applied for protection as refugees or persons in need of protections pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [*IRPA*] on October 20, 2019. The Refugee Protection Division [RPD] denied their application on February 7, 2022, finding that the

Applicants had a viable internal flight alternative [IFA]. The Refugee Appeal Division [RAD] denied their appeal on September 29, 2022. The Applicants seek judicial review of the RAD's decision.

[2] For the reasons that follow, I dismiss this application for judicial review. The Applicants have not demonstrated that the decision was unreasonable.

II. Background

A. *Facts*

[3] The Applicants are practising Sikhs. On June 6, 2018, the police raided the Applicants' Sikh temple looking for militants. The police alleged that the temple's leader, Mohinder Singh, was providing food and shelter to militants at the temple. The police did not find the leader at the temple on the day of the raid.

[4] The police raided the Applicants' home looking for the leader when they discovered that the Principal Applicant was a close friend. The Principal Applicant was not at home during this incident, as he was working. The police instructed the Applicants' village council to present the Principal Applicant at the police station, alleging that he was also involved with the militants.

[5] Through the assistance of the friend of a friend, Jaspal Singh, the Principal Applicant presented himself to the deputy superintendent of police in the Tarn Taran district. Jaspal Singh is involved with the Congress Party of India, and his cousin, Gurinder Singh, is the deputy

superintendent of police in the Tarn Taran district. At the police station, the Principal Applicant was questioned about the leader, militants, as well as the leader's activities at the Sikh temple. On his release, he was made to promise the police that he would provide information about the leader and other militants going forward.

[6] The Applicants and Jaspal Singh arranged for the Applicants' daughter to marry Jaspal Singh's son. An engagement ceremony was held in India. The marriage was held on February 21, 2019, in Canada. The Principal Applicant attended the wedding in Canada, and subsequently returned to India on March 4, 2019.

[7] Following the marriage, Jaspal Singh demanded a larger dowry as well as payment for his intervention with the police. In Canada, Jaspal Singh's son started harassing the Applicants' daughter for the same reason.

[8] On April 24, 2019, the police raided the Applicants' house, and the Principal Applicant was arrested. At the police station, he was once again questioned about the leader and other militants. The Principal Applicant was tortured and accused of providing food and shelter to militants. He was also accused of visiting Canada to collect funds for the militants.

[9] Through the assistance of the village council and influential people, as well as through the payment of a bribe, the Principal Applicant was released on April 26, 2019. The police took the Principal Applicant's fingerprints, photos, and signatures on blank papers. He was ordered to report to the police station every month starting on June 1, 2019. Additionally, he was instructed

to bring the leader forward, and to abide by Jaspal Singh's requests. The Principal Applicant believes that Jaspal Singh orchestrated the arrest.

[10] After his release, the Applicants learned that their daughter separated from Jaspal Singh's son. The Principal Applicant arranged to visit his daughter in Canada on May 19, 2019. His wife and their other daughter remained in India.

[11] While the Principal Applicant was in Canada, the police visited and questioned the Secondary Applicant. The police also searched the Applicants' home. On August 10, 2019, the Secondary Applicant wrote a letter to the authorities complaining about the police's conduct. On August 16, 2019, the Secondary Applicant was arrested, questioned, beaten, and sexually abused by the police. She was released on August 17, 2019, following the intervention of the village council and the payment of a bribe. The release conditions required that she bring the Principal Applicant forward to the police within a month. The Secondary Applicant left India and made her way to Canada on September 3, 2019. The Applicants' other daughter remains in India.

[12] After the Secondary Applicant's departure from India, the Applicants were told that police are looking for them and have linked the Applicants to militants. The police have repeatedly visited the Applicants' home and questioned their neighbours about them. The police are alleging that the Applicants are helping Sikh militants from Canada. The Applicants believe this to be the doing of Jaspal Singh.

[13] The Applicants filed a claim for refugee protection in Canada. On September 28, 2021, the Applicants updated their Basis of Claim [BOC] narrative stating that the police are still looking for them. The police allege that the Applicants are helping Sikh militants from Canada, and Jaspal Singh continues to threaten them, and is using his political influence to obtain help from the police to target the Applicants.

B. *Decision Under Review*

[14] The RPD concluded that the Applicants had a viable IFA in Delhi. On appeal to the RAD, the Applicants submitted that the RPD lacked procedural fairness, misapplied the IFA criteria and erred in failing to analyze whether the Applicants would be exposed to an objective risk of persecution upon return to India. They feared their daughter’s ex-father-in-law and the police who accuse them of supporting militants.

[15] The RAD reviewed the evidence on the record that included the transcript of the RPD hearing on October 8, 2021 and the Applicants’ submissions.

[16] The RAD denied the Applicants’ appeal because it concluded that the Applicants had a viable IFA in Delhi. The RAD also concluded that the agents of persecution lacked the mains and motivation to harm the Applicants in the IFA location. Finally, the RAD found that the Applicants failed to establish that living in the IFA location would be objectively unreasonable.

[17] When assessing the first prong of the IFA test, the RAD considered religious freedom, the capacity of the agents of persecution to seek the Applicants as persons of interest, and the

motivation of the agents of persecution. The RAD found that, on a balance of probabilities, the Applicants had not presented sufficient credible evidence to establish that they will be subject to persecution, danger, or risk in Delhi and have not established that their agents of persecution have the means and motivation to find them in Delhi.

[18] When assessing the second prong of the test, the RAD considered the Applicants' age, level of education, qualifications, employment history, property ownership, financial circumstances, religion, spoken languages, and perceived difficulties in finding housing and employment in Delhi. The RAD found that the Applicants failed to demonstrate that it would not be objectively unreasonable for them to relocate to Delhi. They also found that the Applicants had not established that the tenant registration system or other methods of tracking would endanger their lives or safety such that it would be objectively unreasonable to relocate to Delhi.

III. Issues and Standard of Review

[19] The parties agree that the issue before the Court is whether the RAD's Decision was reasonable and that the applicable standard of review is reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. I agree that this is the appropriate standard to be applied in this case.

[20] A reviewing court does not ask what decision it would have made in place of that of the administrative decision maker. It is "an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of

judicial restraint and demonstrates a respect for the distinct role of administrative decision makers" (*Vavilov* at para 13).

[21] A reviewing court does not attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis, or seek to determine the "correct" solution to the problem (*Vavilov* at para 83).

[22] 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 refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125).

[23] A reasonable decision is one based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85).

[24] The onus is on the party challenging the decision to show that the decision is unreasonable (*Vavilov* at para 100).

IV. Relevant Law

[25] The following provisions of the IRPA are applicable in this proceeding:

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

> (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
>
> (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
>
> (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
>
> (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

[26] An IFA is "inherent in the definition of a Convention refugee" (*Rasaratnam v Canada (MCI)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (CA) [*Rasaratnam*] at 710). A Convention refugee and a person in need of protection must be found to face the identified risk in every part of their country of origin. A viable IFA, if found to have met both prongs of the IFA test, will negate a claim for refugee protection under either section 96 or 97, regardless of the merits of other aspects of the claim (*Olusola v Canada (MCI)*, 2020 FC 799 at para 7).

[27] The test for finding a viable IFA test requires a claimant to satisfy two criteria on a balance of probabilities. First, there must be no serious possibility of a claimant being persecuted in the part of the country to which it finds an IFA exists. Second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances including circumstances particular to him, for the claimant to seek refuge there (*Rasaratnam* at paras 709-711 and *Thirunavukkarasu v Canada (MCI)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*] at paras 592, 597).

[28] Both *Rasaratnam* and *Thirunavukkarasu* held that the tribunal must be satisfied, on a balance of probabilities, that there is no serious possibility of the Applicant being persecuted in the proposed IFA (*Rasaratnam* at para 13). A serious possibility of persecution can only be found if it is demonstrated that the agents of persecution have the probable means and motivation to search for an applicant in the suggested IFA (*Saliu v Canada (MCI*), 2021 FC 167 at para 46 citing *Feboke v Canada (MCI)*, 2020 FC 155 at para 43).

[29] The tribunal must also be satisfied that, in all the circumstances, including the Applicant's particular circumstances, the conditions in the proposed IFA are such that it is not unreasonable for the Applicant to seek refuge there (*Ranganathan* at para 15). The threshold to establish

unreasonableness is very high, requiring "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area" (*Ranganathan* at para 15).

[30] The applicant bears the onus of refuting the reasonability of the IFA, taking into account their particular situation and the country involved (*Thirunavukkarasu* at 597).

V. Analysis

[31] The Applicants raise four issues that they identify as errors rendering the RAD decision unreasonable:

A. The Officer required the Applicants to meet a burden of proof of "absolute certainty" by applying the standard of a "balance of probabilities";

B. The Decision was unreasonable because the RAD and RPD did not properly consider the Associate Applicant's gender;

C. There is a serious possibility the Applicants would be persecuted in the Delhi IFA; and,

D. The Delhi IFA is unreasonable because of discrimination against Sikhs.

A. *Burden of Proof*

[32] As a preliminary note, counsel for the Applicants argued that the RAD erred by applying an improper burden of proof, by finding that the Applicants did not establish with absolute certainty that harm would occur.

[33] I was directed to portions of the RAD decision where the terms "balance of probabilities" appeared in the decision. The Applicants indicate, that notwithstanding the repeated use of this

term, I should read the decision to mean that the RAD required absolute proof of evidence that this risk would occur. In essence, where “balance of probabilities” appeared in the RAD decision, the Applicant has argued that the manner in which the RAD assessed their application actually required the Applicants prove with “absolute certainty that harm will occur” and that the risks alleged “would absolutely happen to them.”

[34] The Respondent disagreed that the RAD applied a standard of “absolute certainty.” The RAD’s conclusions were based on a weighing of evidence and references are grounded in the record.

[35] A claimant under section 97 of the *IRPA* requires that it is “more likely than not” that they would be personally subjected to a danger of torture, cruel and unusual treatment if returned, and establish this case on a “balance of probabilities” (*Li v Canada (MCI)*, 2005 FCA 1 at paras 9-14). In other words, the claimant must establish that they are personally subject to danger, on a balance of probabilities.

[36] Upon reviewing the RAD decision and the record before it, I cannot conclude that the RAD applied the wrong burden of proof. I do not find a contradiction in the RAD’s finding that some portions of the Applicants’ testimony were credible and yet they still did not meet their burden of proof. Finding that the Applicants failed to meet their burden of proof means that the Applicants have not established that it is more likely than not that a fact in dispute is correct. The RAD did not determine that the Applicants are wrong or that they are lying, only that they have failed to establish with sufficient evidence the facts they have asserted.

[37] I therefore find that the RAD applied the proper burden of proof.

B. *The Decision is Reasonable*

[38] The Applicants allege that the RAD erred in not considering the Secondary Applicant's gender.

[39] The Respondent argues that the Secondary Applicants' testimony at the RPD underlined that her primary basis of fear was because the police were looking for her spouse. The Applicants' submissions at the RPD on the IFA did not mention gender.

[40] On reviewing the materials, there is no mention in the Applicants' BOC that the Secondary Applicant is basing her claim on her gender. In fact, their BOC has no information entered anywhere except "see my story," referring to the attached 2-page story written and submitted by the Principal Applicant. The Secondary Applicant adopted the Principal Applicant's story as their own. The RAD canvassed the factors raised in the Applicants' BOCs, and the only gender-related issue was that the Applicants alleged the RPD failed to apply the Gender Guideline, which they analyzed and found that the guideline was properly applied.

[41] The Respondent cites Justice Gascon's reasoning that "[t]he RAD cannot be faulted … for failing to address an issue that was not put to it and that did not emerge perceptibly from the evidence" (*Singh v Canada (MCI),* 2023 FC 1715 [*Singh*] at para 45, citing *Guajardo-Espinoza v Canada (MCI)*, [1993] FCJ No 797 (QL) (FCA) at para 5; *Eyitayo v Canada (MCI)*, 2020 FC 1072

at para 27; *Akintola v Canada (MCI)*, 2020 FC 971 at paras 29–32; *Dhillon v Canada MCI)*, 2015 FC 321 at para 23).

[42] While the National Documentation Package [NDP] before the RAD included some general information on sexism in India, there was nothing in the Applicants' materials to suggest they would face a serious possibility of persecution in, or that it would be unreasonable to move to, Delhi due to the Secondary Applicant's gender. More specifically, if they are alleging that the factor to be considered was a Sikh female sexual assault survivor, this was also not identified. It was the Applicants' onus to lead evidence and arguments on the factors that justify protection under either s. 96 or s. 97 of the *IRPA* or how it renders relocation to Delhi unreasonable.

[43] The Applicants did not raise these arguments in their applications, nor did they properly raise this before the RAD. As Justice Gascon found in *Singh*, I cannot fault the RAD for not considering factors which the Applicants advanced no specific arguments and submitted no objective evidence of.

C. *No Serious Possibility of Persecution*

[44] A point of contention was the role of Jaspal Singh as the agent of persecution. During the hearing, the Applicants focused on identifying the RAD's errors in appreciating that the agent of persecution was Jaspal Singh, who had ties to the police and to the dominant political party in India.

[45] The overriding argument submitted by the Applicants is that the RAD ignored significant evidence that Jaspal Singh had significant ties to the police and his political ties. There was evidence of repeated and ongoing attempts to find the Applicants, and the RAD ignored Jaspal Singh's wide scope of influence, which meant that their agents of persecution would be able to will track them down in Delhi.

[46] The Respondent underlined that the hearing on judicial review is the first time that so much emphasis has been put on Jaspal Singh. The Respondent directed me to the Applicants' submissions before the RAD. In none of the submissions before the RAD was there any mention of Jaspal Singh. There were no grounds presented on the appeal of the RPD decision that Jaspal Singh was a main agent of harm. Regardless, the Respondent indicates that the RAD considered Jaspal Singh in any event, as part of its review of the RPD decision and therefore any of the Applicant's arguments relating to this individual as an agent of harm is inconsequential.

[47] The Applicants bear the onus of establishing that it is more likely than not that the police in Punjab would be able to track them to Delhi at Jaspal Singh's command.

[48] With respect to the police as an individual agent of persecution, the Applicants acknowledged their arrests were illegal arrests for which they were released after the payment of bribes. The NDP repeatedly confirmed that this is an unfortunately common occurrence in India, and that such arrests are typically not recorded. As such, it is unlikely that illegal arrests are recorded in the police system as police want to avoid scrutiny and accountability.

[49] If the arrests were legal, there are various substantive and procedural obligations on the police that would serve as evidence that the Applicants are in some database. No such evidence was presented. It was therefore open for the RAD to conclude that the Applicants failed to establish on a balance of probabilities that they would appear in any police database such that they would be flagged by the tenant verification system.

[50] As it relates to Jaspal Singh as an agent of persecution, the Applicants submitted that he had the motivation to locate them, and the means with police acting on his behalf. In spite of the strenuous arguments made, there was no evidence of any reliable link between Jaspal Singh with the government or police.

[51] In the transcript of the RPD proceedings, the Principal Applicant stated that Jaspal Singh "does not have a post," that the Principal Applicant did not have evidence Jaspal Singh was in the Congress Party, and that he had no proof that Jaspal Singh was a powerful leader in his community. The Principal Applicant confirmed he did not make any effort to get proof of the claims related to Jaspal Singh and stated that everyone was scared to help him collect any proof. When asked whether there were newspaper articles or documents to show how powerful Jaspal Singh was that would be publicly accessible, the Principal Applicant replied that he "did not know about this. I don't have any information."

[52] The Principal Applicant testified before the RPD that he did not have any evidence linking Jaspal Singh to the government or to police authorities. There was also no other evidence before

the RAD about this individual specifically. There was also insufficient evidence that the police or government would be able to track them, or were interested in the Applicants.

[53] Based on the statements made on the record, it was open for the RAD to find that the Applicants did not establish on a balance of probabilities, that there is a serious possibility they would be persecuted or subject to a risk to their life or cruel and unusual treatment or punishment, or a danger of torture, in Delhi. They have only asked this Court to reweigh select evidence in their favour, which is not what the Court can do on judicial review.

[54] I do not find that there is a reviewable error in the RAD's assessment of the first prong of the IFA.

D. *IFA to Delhi is Not Unreasonable*

[55] The Applicants argued that the IFA was unreasonable because it did not consider discrimination Sikhs face as a minority in India, rendering any relocation unreasonable.

[56] The Applicants submitted evidence describing discrete instances of discrimination and violence against Sikhs in India through the NDP and newspapers articles. However, they made bold assertions that they would "encounter great physical danger or undergo undue hardship in travelling" to Delhi without any particular evidence identifying or linking these dangers to their circumstances.

[57] The onus is on the Applicant to adduce "actual and concrete evidence" of how conditions affecting Sikhs in Delhi relate to their own particular circumstances such that relocation to Delhi would be unreasonable (*Ranganathan* at para 15). The Applicants provided insufficient evidence to demonstrate that the objective conditions in Delhi, in all the circumstances including those particular to the Applicants, render relocation to Delhi unreasonable. On this basis, it was open to the RAD to conclude that their submissions were unsubstantiated and reject these arguments.

[58] I do not find that there is a reviewable error in the RAD's assessment of the second prong of the IFA.

VI. Conclusion

[59] The jurisprudence is clear that the identification of a viable IFA is fatal to a claim for refugee protection under the *IRPA*. The Applicants did not persuade me that the decision was unreasonable. The RAD's decision is intelligible, transparent, and justified (*Vavilov* at paras 10, 25, 99). Accordingly, this application for judicial review is dismissed.

[60] Both parties confirmed that there was no question for certification, and none arises.

JUDGMENT in IMM-10853-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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