Federal Court  Cour fédérale

Date: 20240502

Docket: IMM-9675-22

Citation: 2024 FC 672

Ottawa, Ontario, May 2, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

BHUPINDER SINGH ATHWAL
SUKHAMRIT SING ATHWAL
GURLEEN KAUR ATHWAL
MANRAI SINGH ATHWAL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a September 13, 2022 decision by the Refugee Appeal Board [RAD] confirming the decision of the Refugee Protection Division [RPD] that Bhupinder Singh Athwal [Principal Applicant], his wife Sukhamrit Singh Athwal [Associate

Applicant] [collectively, Adult Applicants], and their two children Gurleen Kaur Athwal and Manraj Singh Athwal [collectively, Minor Applicants] [collectively, Applicants] are neither Convention refugees under s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], nor persons in need of protection under s. 97 of the IRPA because there was a viable internal flight alternative [IFA] location identified [Decision]. For confidentiality reasons, the IFA locations identified by the RPD and RAD will not be disclosed in this Judgment.

[2] The Applicants allege that the RAD made findings unsupported by evidence, misapprehended facts, and erred by adopting the RPD's analysis of the IFA's reasonability. The Respondent contends that the Decision was reasonable, that any confusion in the Decision resulted from conflicting evidence and testimony given by the Applicants, and in any event, that the alleged points of confusion were not determinative.

[3] For the reasons that follow, the application for judicial review is dismissed. In my view, the RAD's Decision was not unreasonable in that it was responsive to the evidence, and its findings regarding the IFA location in Mumbai have the qualities that make the decision maker's reasoning logical and consistent in relation to the relevant legal and factual constraints. The Applicants' efforts to re-argue their case and make new submissions on old issues are impermissible as it is not the proper role of this Court on judicial review.

II. **Background**

[4] The Applicants are Indian citizens whose problems began because the police accused the Principal Applicant's close friend "SS" of providing food and shelter to gangsters and militants.

The Principal Applicant and others paid a bribe to secure SS's release from police custody, and they acted as the guarantors of SS. In October 2017, SS subsequently fled, leaving the Principal Applicant to answer to the police about SS's whereabouts.

[5] On July 17, 2018, the police raided the Applicants' home, and arrested the Adult Applicants. They alleged the police abused them, alleged they had connections to gangsters and militants, and that they were making false allegations against the police. During their detention, the police took the Adult Applicants' signatures on blank papers and the Principal Applicant's fingerprints and photo. After people from their village bribed the police, the Adult Applicants were released but the police placed the Principal Applicant on monthly reporting conditions. After this, the Applicants fled to New Delhi and subsequently left India.

[6] The Applicants submitted a refugee claim upon arrival in Canada, alleging persecution by the police in Jalandhar.

[7] The RPD rejected the Applicants' claim because they could have safely relocated to either of two designated IFA locations in India, and it was not unreasonable to require them to move there. This met the conditions for a viable IFA, and the Applicants could not therefore qualify as refugees.

III. **Decision Under Review**

[8] Despite a number of errors in the RPD's decision, the RAD upheld the RPD's IFA finding because the errors did not change the outcome of the case, and the RPD was correct to

conclude that there is an IFA in one of the two designated locations in India identified by the RPD. The RAD noted that the Applicants argued the RPD erred in its IFA analysis, but did not submit any new evidence on appeal, and did not ask for an oral hearing. The RAD conducted its own analysis, admittedly with scant reasons, arriving at the same findings as the RPD that the IFA identified was reasonable and that finding was uncontested by the parties, and they went on to consider the Applicants' religion, education, employment history, and languages spoken.

[9] The RAD made the following findings with respect to the designated IFA:

a. The Applicants have not shown the Jalandhar police from the Punjab state are motivated to pursue them nationwide because, while the Applicants are right that there are many examples of police arresting, detaining, and torturing people on accusations of anti-nationalism or terrorism, it is unlikely the police genuinely see the Applicants as militants and/or terrorists, which conclusion was based on the police's actions; and

b. The local Jalandhar police do not have the means to locate the Applicants because:

    i. the Applicants have not established that their information appears in India's Crime and Criminal Tracking Network System [CCTNS];

    ii. it is unlikely the police have the means or sufficient interest to track the Applicants through either tenant verification, Internet metadata, the Applicants' Aadhaar card data; and

    iii. given the limitations on airport authorities, they would likely not have the resources to intercept the Applicants at the airport.

[10] The RAD noted that the Applicants did not raise any arguments on appeal related to the reasonableness of the IFA. After reconsideration of the information in the record and conducting its own independent analysis, the RAD considered the conditions in the designated IFA and found that it is not objectively unreasonable for the Applicants to seek refuge by relocating and residing in the designated IFA.

IV. **Issues**

[11] The Applicants' only point in issue is whether the RAD erred in its findings of a viable IFA in the designated IFA location.

V. **Relevant Law**

A. ***Standard of Review***

[12] The Applicants had no submission on the standard of review. The Respondent submits the standard is reasonableness. The Supreme Court of Canada has established that when conducting a judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23).

[13] The reasonableness standard "requires that a reviewing court defer" to a decision that is based on "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 85 and 99). In assessing

whether a decision is reasonable, the Court will assess whether the decision is appropriately justified, transparent and intelligible. Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[14] If there is no breach to the procedural fairness duty, the Court will apply *Vavilov*'s presumption to use the reasonableness standard of review. In that case, a court applying the reasonableness standard does not ask what decision it would have made in place 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).

[15] 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).

[16] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

B. ***Viable Internal Flight Alternative***

[17] 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 [*Olusola*]).

[18] The test for finding a viable IFA was set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (CA) [*Rasaratnam*], and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 at 597 (CA) [*Thirunavukkarasu*]. This test requires a claimant to satisfy the Board of a well-founded fear of persecution in their part of the country, and, in finding the IFA, the Board must be satisfied, on a balance of probabilities, of two things:

a. There is no serious possibility of the claimant being persecuted or subject to a section 97 danger or risk in the part of the country to which it finds an IFA exists; and

b. 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 711; *Thirunavukkarasu* at 592.

[19] When discussing an IFA, it is important to consider that an IFA is "inherent in the definition of a Convention refugee" (*Rasaratnam* at 710). This is because an IFA is not a legal defence or doctrine, it is merely a "short-hand way of describing a fact situation in which a person may be in danger of persecution in one part of a country but not in another" (*Thirunavukkarasu* at 592). An IFA can only exist if the claimants have established a serious possibility of persecution under a Convention ground (see *IRPA* section 96) or if removal to their country exposes an applicant to a risk of torture or other enumerated risk, and that such risk exists throughout the country (see *IRPA* section 97(1)(b)(ii)). If no serious possibility of persecution or the aforementioned risk exists throughout the country, there is no reason to advance to an IFA analysis.

[20] The key element of the first prong of the IFA test, a serious possibility of persecution or risk, 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 (Citizenship and Immigration)*, 2021 FC 167 at para 46 [*Saliu*], citing *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 43).

[21] In addition, the tribunal must also be satisfied that, in all the circumstances, including the Applicants' particular circumstances, the conditions in the proposed IFA are such that it is not unreasonable for the Applicants to seek refuge there (see *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) [*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).

VI. **Analysis**

[22] The Applicants take a "shotgun approach" to their submissions with respect to the IFA, contesting almost everything the RAD said and concluded. Breaking them down, I count approximately 22 specific alleged errors. The Respondent's submissions are more concentrated, focusing on what they see to be determinative issues. The Respondent also points out that the Applicants did not challenge the reasonableness of the IFA by the RAD and made no arguments to the RAD on this point. However, in the interest of fairness, I will consider their submissions on this point now.

[23] The RAD concluded that the Applicants have not shown the Jalandhar police from the Punjab state are motivated to pursue them nationwide, nor do the local Jalandhar police have the means to locate them, primarily because it is unlikely the police genuinely see the Applicants as militants and/or terrorists. I find it was reasonable for the RAD to find an IFA in the designated IFA location. The Applicants had not met their burden under the IFA test to prove they face a serious risk of persecution by the alleged agents of persecution.

[24] In their effort to meet their burden under the IFA test, the Applicants offer a myriad of arguments, which shall be addressed as the subcomponents of the first prong of the *Rasaratnam* test under the following categories:

a. Police's motivation to find the Applicants;

b. Police's general capacity to find the Applicants; and,

c. Police's capacity to find the Applicants due to corruption.

[25] These categories will guide my analysis, but I must reiterate that these are not credibility findings or attempts to *disprove* the Applicants' allegations. This analysis is exclusively a discussion of the evidence before the RAD, its treatment by the RAD, and whether in light of the Applicants' submissions and the RAD's treatment of the evidence, it was reasonable for the RAD to find the Applicants had not met their onus in demonstrating that the IFA was unreasonable.

A. *Police's motivation to find the Applicants*

(1) Issues concerning why the police were interested in the Adult Applicants in the first place

[26] The RAD found that, in light of the circumstances of the Adult Applicants' arrest, their subsequent release, and the police's conduct since then, there was no indication that the police were motivated to find the Applicants for suspicion of any crime. With respect to the Adult Applicants' complaint against the police, the RAD found the police were only interested in intimidating the Adult Applicants into dropping their claim. They likewise found there was no indication that the Adult Applicants fit the profile of any person the police would attempt to track to another jurisdiction.

[27] The Adult Applicants maintain that the police were interested in them in the first place because the police arrested and accused them of being associated with militants after SS absconded, and that they had made fraudulent complaints against the police. From the evidence and the RAD's findings, it is clear that this arrest was illegal, supported by the Adult Applicants' release following payment of a bribe. It is uncontested that the Adult Applicants were detained, and the Adult Applicants attribute their detention to the fact the Principal Applicant was the guarantor for the release of SS, not that they themselves were themselves militants or even criminals. It was the Applicants' own evidence that, after being detained, the police informed them that they were detained for two reasons: first, the Principal Applicant was the guarantor for SS, and second, that the Adult Applicants were pursuing a "fraudulent lawsuit" against the police.

[28] The Applicants point to the RAD's erroneous interpretation that the Principal Applicant's fingerprints being taken, on blank paper was insufficient to determine that their information was not in the CCTNS because the Applicants never stated the fingerprints were on blank paper, just the signatures. The Applicants' BOC indicates police took their "fingerprints, photos, and signatures on blank papers." On this point, I believe the Applicants are technically correct that their evidence did not indicate in what manner the fingerprints were taken. The interjection of the word "photos" between the words "fingerprints" and "signatures on blank papers" makes the supposition that all three were taken on blank papers illogical as one cannot take photos using blank papers. However, this point is not helpful to the Applicants because they did not offer any evidence on how these documents *were* taken, submitting instead without evidence that the Indian government is pushing for police to use digital systems, so it is "more probable" than not

that the fingerprints and photos were taken digitally. Without any evidence to support their hypothetical scenario, there is simply not enough evidence to determine that the RAD erred in this finding.

[29] While I will deal with the bulk of the Applicants' submissions on the use of the CCTNS and tenant verification system in the discussion below regarding the police's capacity to track the Applicants, it bears mention here that the Adult Applicants themselves agree their arrest was illegal. To establish a likelihood that the Adult Applicants would be entered into the CCTNS or similar criminal database, the National Documentation Package [NDP] is clear that the Adult Applicants must have been charged with or accused of a major crime, or have a warrant or First Information Report [FIR] issued against them related to a major crime (see for example *Kumar v Canada (Citizenship and Immigration)*, 2024 FC 288 at para 37; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1758 [*Singh 1758*] at para 30; *Sandhu v Canada (Citizenship and Immigration)*, 2024 FC 262 at para 21). The Adult Applicants have essentially agreed already that they do not meet this profile, and so despite their insistence to the contrary, they have failed to establish on a balance of probabilities that it is likely they would have been entered into the CCTNS or similar criminal database, and the RAD's findings in this regard are not unreasonable.

(2) **Issues concerning the police's continued interest in the Adult Applicants**

[30] Related to the police's initial interest in the Adult Applicants, the RAD found the police's *continued* interest was not demonstrated. They noted the police failed to look for the Applicants with other family members within India over the 3.5 years preceding the Decision The police only ask neighbours approximately every 4-5 months, and they have not escalated any effort to

find the Adult Applicants, all evidence suggesting the police do not view the Adult Applicants as threats to Indian national security such that the police nationwide would be engaged to search for them.

[31] The only real allegation to support the police's continued interest in the Adult Applicants, phrased several different ways by the Adult Applicants, is that the police continue asking about them in their neighbourhood. They also point to the fact that the police went once to visit their cousin in Delhi to ask about the Adult Applicants in 2018 to suggest they have a sustained motivation and interest which, when combined with the continued questioning, suggests a motivation or interest in finding the Adult Applicants.

[32] The Respondent highlighted in both their written and oral submissions that the lack of charges against the Adult Applicants suggests a clear lack of motivation to find them. In response, the Applicants suggest that this assessment regarding the absence of charges is "erroneous" and "irrelevant" because past behaviour indicate the police would follow them to other jurisdictions. A nearly identical argument, with nearly identical facts, was addressed in Justice Gascon's decision of *Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557 [*Khosla*]. Justice Gascon disagreed with the suggestion "that a lack of charges could nonetheless be reflective of a likely and continued motivation" of the police to find the Adult Applicants (*Khosla* at para 36).

[33] The circumstances of the Adult Applicants' detention were clearly illegal, but there was no accusation that the Adult Applicants were themselves militants or otherwise that they were

suspected of a major crime. In fact, it was the Principal Applicant's own testimony during the RPD hearing that the police "did not have any hard proof against me and they were *suspecting me of having links* to [militants] and that's why they kept me" (emphasis added). There were no charges laid, nor were charges even suggested. As discussed above, the reality is the Adult Applicants do not meet the profile of someone the police would enter into a criminal database like the CCTNS, and the circumstances of their arrest and subsequent release suggest the police would not enter them into a database anyway.

[34] The Applicants also raised concerns that returning to India would force their family to lie to police, exposing them to greater danger, citing this Court's findings that such circumstances made an IFA unreasonable (see *Ali v Canada (Citizenship and Immigration),* 2020 FC 93 [*Ali*] at paras 49-50). My review of the jurisprudence surrounding *Ali* suggests that it is not any danger that will suffice. The danger posed which make relocating to an IFA tantamount to going into hiding by requiring the Applicants to hide from and cut off communications with family members and friends are dangers posed by knowledge of the claimant's whereabouts, or even of their return to their country of origin (*Zamora Huerta v Canada (Citizenship and Immigration),* 2008 FC 586 [*Zamora Huerta*] at para 29; *Ali* at para 50; *Singh v Canada (Citizenship and Immigration),* 2023 FC 851 [*Singh 851*] at paras 15-16; *Shakil Ali v Canada (Citizenship and Immigration),* 2023 FC 156 at para 12).

[35] With this in mind, an IFA may be unreasonable following *Ali* if, based on the facts found by the RAD, the claimant would be exposed to danger and forced into hiding in the proposed IFA and either conceal their location from their family or expose their family to danger by asking

them not to share their location with the agent of persecution (*Pastrana Acosta c Canada (Citoyenneté et Immigration),* 2023 CF 139 at paras 6-9; *Singh 851* at paras 23-24; *Ali* at paras 44-46). In contrast to this threshold, the Applicants offer no evidence of any harm of threats thereof to themselves or family stemming from the police merely asking about the Adult Applicants within their own community. In this respect as well, the RAD's findings are not unreasonable.

B. ***Police's general capacity to find the Applicants***

[36] The RAD found, based on the findings regarding the police's level of interest in and suspicion of (or lack thereof) the Adult Applicants, that the police do not have the means to locate the Applicants and would not be able to employ surveillance measures to track them. The RAD addressed the Applicants' submissions on the capacity of the police to track by finding two fatal concerns. First, the Applicants presuppose that the "police" in India, are synchronized and operate in tandem. Second, the Applicants are adamant that, even if the police did have the resources and level of coordination alleged by the Applicants, the police would use all available resources including bribing government officials and politicians to pursue them.

[37] The RAD dealt with the first concern, the presupposition of coordination, by referencing the NDP. The NDP clearly highlights at several points that each state's police force works alone, coordinating with other state or national forces only when the suspect is of sufficient interest on charges of sufficient severity. A single visit from Delhi police in 2018 immediately following the Applicants' departure is not sufficient to demonstrate capacity generally, especially considering how stale these allegations are now and the evidence that the police have not done so again. The

Adult Applicants have not been charged, there are no outstanding warrants and the police have made no serious effort to track them down since 2018. If they were going to coordinate to locate the Adult Applicants on charges of terrorism or militancy, there would be evidence that they have done so and there is none.

[38] The RAD addressed the second concern, an assumption of the police's willingness to fully use their resources, by pointing out that there is nothing in the evidence to suggest the Adult Applicants are of such significant interest to the police on undocumented allegations of potential association with possible terrorism that they, despite having no charges or warrants, are in any national database. The NDP clearly indicates the police make illegal arrests under the guise of association with militants or terrorism without going any further because there is no evidence.

[39] As discussed above, the Adult Applicants do not meet the profile of individuals the police would enter into a criminal database, nor do the circumstances of their arrest and subsequent release by bribery indicate the police have any desire to do so. If the Adult Applicants are not in a criminal database like the CCTNS, it stands to reason that they would not be subsequently flagged by the tenant verification system for having been identified in one of those criminal databases. The Adult Applicants' alleged fear of the police using these systems to track them down is predicated on the false presumption they are already in these systems. Failing to establish this, there is no error in the RAD's determinations in the police's capacity to find the Adult Applicants.

C. ***Police's capacity to find the Adult Applicants due to corruption***

[40] Separate and apart from the issue of criminal databases and the police's capacity to track people generally, the RAD considered and thoughtfully examined the Applicants' submissions in respect of the police's potential to use illegally acquired access to metadata or Aadhaar card biometric data to track the Adult Applicants by bribing other government officials and/or violating Indian law. The RAD recognized that several of the Applicants' allegations are based on the prospect that they believe the police would bribe politicians or government officials, or other law enforcement, to pursue them. Both the RAD and the Respondent point to the significant penalties facing police for doing such a thing, and it logically follows that even if they were to consider such an act, it would not be to pursue someone who was illegally detained once, now six years ago, over a *suspicion* of association with militants or terrorism.

[41] The Applicants acknowledge that police are prohibited by law from accessing or using this data for criminal investigations. Despite this acknowledgment, the Applicants argue the prevalence of corruption and bribery gives rise to a sufficient fear of persecution from use of this biometric data because the police could still bribe someone to get it. This submission has been dealt with recently by members of this Court (*Singh 1758* at para 31; *Sandhu v Canada (Citizenship and Immigration)*, 2024 FC 262 [*Sandhu*] at para 22). The NDP is unequivocal that the *Aadhaar Act*, the Aadhaar system's governing statute, prevents the agency running it (the Unique Identification Authority of India) from sharing this data for criminal investigations. As in *Singh 1758*, the Applicants have offered no credible evidence nor justifiable argument to overcome that "the police cannot use biometric data from the Aadhaar card and tenant

verification system for criminal investigations" (*Sandhu* at para 22, citing *Singh 1758* at para 31). Without evidence to the contrary, or at least evidence to establish on a balance of probabilities that the police are *so motivated* to find the Adult Applicants that they would run the risk of illegally acquiring access to the Aadhaar system's data to track them, these submissions are nothing more than conspiracies made to vilify the unknown.

D. ***Summary***

[42] To tie the above together, the Applicants bear the onus of demonstrating a reviewable error in the RAD's Decision, which, in this case, would need to point to a finding that the RAD's determination with respect to the IFA was unreasonable. To their credit, the Applicants raised countless arguments for why they believe the police have a continued interest in pursuing them, and have the capacity and willingness to do so.

[43] In order for the Applicants to meet their onus in the context of their specific contentions for why the police would be motivated to pursue them even if they returned to the designated IFA, the Applicants would need to demonstrate that they either have a criminal record in India, have been charged with any crime in India, or are wanted as a person of interest in connection with an investigation in India. These are the circumstances that the Court understands would be sufficient for the Applicants to establish a likelihood that the police are motivated to pursue them upon return to India even at the destination of the proposed IFA. They have failed to do so.

VII. **Conclusion**

[44] For the reasons set forth above, this application for judicial review is dismissed. I find that the RAD reasonably considered the evidence and concluded that the Applicants had a viable IFA in the designated IFA location. Numerous factors have led the RAD to conclude that the police do not have the motivation and means to track down the Applicants in the proposed IFA. It was reasonable for the RAD to conclude that Mumbai is a valid IFA for the Applicants.

JUDGMENT in IMM-9675-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question of general importance to be certified.

"Ekaterina Tsimberis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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