Federal Court  Cour fédérale

Date: 20241220

Docket: IMM-9573-23

Citation: 2024 FC 2082

Ottawa, Ontario, December 20, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

NAVJEET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Navjeet Singh [the Applicant], is seeking a Judicial Review of the rejection of his refugee protection appeal by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada.

[2] The Applicant is a citizen of India and is of Sikh religion. He arrived in Canada in 2014 as a student. Prior to his arrival in Canada and while still in India, he was dating a Hindu woman whose family did not approve of the relationship. The Applicant alleges that her family had

connections to the police and the ruling Hindu nationalist party, the BJP, and wants to persecute and harm him.

[3] The RAD confirmed the Refugee Protection Division [RPD]'s decision that the Applicant had a viable Internal flight alternative [IFA] in a number of proposed cities in India. The RAD's independent assessment found that the woman's family lacked the means and motivation to find the Applicant in the IFA, and there was insufficient evidence of their influence with the authorities.

[4] The Applicant had also attempted to file new documents before the RAD which the RAD did not accept. These documents related to the Applicant's alleged pro-Khalistan activities in Canada.

II. Decision

[5] I dismiss the Applicant's judicial review application because I find the decision made by the RAD to be reasonable.

III. Standard of Review

[6] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

IV. Analysis

A. *Legal Framework: IFA*

[7] The two-prong test for an IFA is well established. An IFA is a place in an applicant's country of nationality where a party seeking protection (i.e., the refugee claimant) would not be at risk. This is decided in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] – and to which it would not be unreasonable for them to relocate.

[8] When there is a viable IFA, a claimant is not entitled to protection from another country. More specifically, to determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that:

a. the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "balance of probabilities" standard) in the proposed IFA; and

b. in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[9] Once IFA is raised as an issue, the onus is on the refugee claimant to prove that they do not have a viable IFA. This means that to counter the proposition that they have a viable IFA, the refugee claimant has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in all the circumstances for them to relocate there. The burden for this second prong (reasonableness of IFA) is high. As held by the Federal Court of Appeal in *Ranganathan v Canada (Minister of Citizenship and Immigration) (C.A.)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [*Ranganathan*] the standard requires 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. In addition, it requires actual and concrete evidence of such conditions.

[10] For the IFA test generally, see Rasaratnam v Canada (Minister of Employment and Immigration), 1991 CanLII 13517 (FCA), [1992] 1 FC 706; Thirunavukkarasu v Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); Ranganathan; and Rivero Marin v Canada (Citizenship and Immigration), 2023 FC 1504 at para 5.

V. Analysis

A. *Did the RAD deal with the rejection of new evidence in a reasonable manner?*

[11] In his memorandum and during the judicial review hearing, the Applicant maintained that his claim for refugee protection was based on the risk to his life stemming from threats by the family of his lover. The Applicant maintained that he feared the state and non-state actors mobilized by the family. It is in this context, and for the reasons below, that I find the RAD dealt with the new evidence in a reasonable manner.

[12] At the RAD, the Applicant presented the following evidence:

> •An affidavit of the employer signed under oath dated June 8, 2023;
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> •A written statement from his brother;
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> •A written attestation from the Khalra Mission Committee;
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> •Photographs taken at a pro-Khalistan rally;
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> •A press article dated November 2, 2022, which reveals that the Indian government considers those who participated in a pro-Khalistan referendum to be anti-nationals. It relies on tab 12.8 of the National Documentation Package [NDC] to reinforce its

> observations. He maintains that he voted in such a referendum that took place on November 6, 2022 in Mississauga, Ontario.

[13] In a nutshell, the Applicant argued that he participated in pro-Khalistan activities in Canada, and voted in the referendum, the news of which reached the Indian authorities, and this resulted in their persecution of his brother.

[14] The RAD applied the criteria set out in section 110(4) of IRPA, pointed to a material inconsistency to reasonably impeach the credibility of the new evidence. The Applicant had alleged that the authorities in India had learnt of his activities in Canada, and in turn, had arrested and tortured his brother in India. To support this allegation, he had provided an affidavit as well as a statement from the brother. However, there was a material inconsistency in the account of what happened to the brother, which the RAD found to be fatal to the credibility of the allegation. While the Applicant had stated in his affidavit that because of his activities in Canada, his brother was arrested by the Mumbai police through the tenant verification system and handed over to the Delhi police. However, the brother had stated that the Mumbai police handed him over to the Punjab police.

[15] At the hearing, the Applicant argued that this was a minor discrepancy, but the RAD provided reasons why it found it to be central to the entire allegation that the Applicant was politically active, and that the Indian authorities had learnt about his activities. The Applicant had used the allegations that the brother was arrested and tortured as the evidence of his *sur place* activities in Canada. Therefore, it was reasonable for the RAD to expect consistency in the details of what happened to the brother. The RAD provided a clear explanation of why this detail was material, and why its lack of credibility was fatal to making a rational connection to the Indian authorities learning about the Applicant’s activities in Canada. It was due to the lack of

credibility that the RAD rejected the new evidence, and I find this to be reasonable in the context of this case.

[16] The Applicant did not make clear submissions on his political or religious conviction to the RAD. Even without the rejection of the new evidence, there was no other evidence of the Applicant's political ideology. I, therefore, find that it was reasonable for the RAD to assess the remaining new evidence, including the photo of a handful of individuals with pro-Khalistan flags or slogans, in the context of its clear credibility finding that the Indian authorities had not learnt about his activities.

[17] The RAD provided clear and detail explanation of how it reviewed each evidence in the context of the requirement of section 110(4) and Rule 29(4). I find that the RAD's finding was reasonable and reasonably explained.

B. *1st Prong: Was the RAD analysis in finding that the Applicant did not face a serious possibility of persecution on a Convention Ground under section 96 IRPA or on a balance of probabilities a personal risk of harm under section 97(1) IRPA in the IFA reasonable?*

[18] The RAD correctly applied the standard of correctness to the RPD's findings to find that the Applicant had a viable IFA in Mumbai or Lucknow. The RAD also provided reasonable explanations when it found the RPD's conclusion to be incorrect, such as in their treatment of the medical evidence, or the potential suggestion of Chandigarh and Punjab. What reasonably mattered to the RAD, was the fact that the RPD suggested multiple locations and correctly applied the two prongs of the IFA test.

[19] The Applicant alleges that the decision is unreasonable because despite finding the Applicant to be credible, the RAD found that there was no connection between his ex-girlfriend

and the police. I find that it was reasonable for the RAD not to confuse credibility with the Applicant's unsubstantiated inferences. The RAD was not obligated to agree with the Applicant's inferences, including on his belief that the girlfriend's family had the means and motivations of mobilizing the police in the proposed IFAs. The RAD provided a clear explanation of why it believed they lacked the means and motivation.

[20] I find that the RAD's reasons demonstrate that the member reviewed the record, as well as the RPD reasons and agreed with the RPD that the connections to the police or political influence were not established. It was through their engagement with the evidence that the RPD and the RAD found that it was insufficient to establish sufficient influence over the police in the IFA..

[21] I also disagree with the Applicant that the RAD overlooked or ignored the integration of the main criminal database, the Crime and Criminal Tracking Network & Systems [CCTNS], and policing system in India. However, through analyzing the documentary evidence on who and how one would get onto the CCTNS, the RAD concluded that the Applicant would likely not. In coming to this conclusion, the RAD cited the Applicant's clean criminal history as one of the reasons. The RAD also explained it agreed with the RPD that the Applicant speculated that the authorities had distributed his photos at the airport.

[22] In his memorandum, the Applicant provides long quotes from the National Documentation package to comment on breaches of human rights in India by Indian police. There is no reason for me to find that the RAD ignored the evidence. However, it was the RAD's job to apply the relevant evidence to the facts that it had found to have taken place, and assess the Applicant's potential future risk. The RAD took the totality of the evidence into account. The

RAD then explained, in detail, why the Applicant's past history including lack of criminal record, his profile, the passage of time, and no evidence of ongoing communication with the girlfriend, did not meet the standard for a serious possibility of persecution or on a balance of probabilities, a personal risk of harm under s 97(1) of IRPA.

[23] It was based on the thorough analysis of the Applicant's evidence that the RAD reasonably concluded that there was no criminal file or record, he had faced an extra-judicial arrest and was probably not reported to the CCTNS, through which tenant verification is conducted. I find that the RAD member based their analysis on the evidence before them and not on assumptions or other speculations. This was reasonable for them to do.

[24] The RAD's analysis shows a thorough understanding and awareness of the CCTNS system and the tenant verification system. The RAD's conclusion that the Applicant's information was unlikely to be in the CCTNS given his particular circumstances of arrest was reasonable and based on the RAD's analysis of the National Document Package documents before it.

[25] I find that in its analysis, the RAD conducted a thorough analysis of the evidence before it on the actions of the police. The Applicant in effect is arguing that the unreasonableness of the RAD decision stems from his disagreement on how the RAD weighed the different evidence.

[26] I find that the RAD's engagement with the evidence to find that the girlfriend's family lacks the means and motivation to track down the Applicant in the IFA, or exercise influence over any authority, was also in full consideration of the totality of the evidence and reasonable.

[27] As the RAD reasonably found, assessing the means and motivation of agents of harm is highly factual, and in the context of the fact-findings by the RAD.

[28] I find that the RAD analysis on the first prong of the IFA to be thorough and responsive to the totality of the evidence before it. The chain of reasoning is clear. I, therefore, find that the RAD's analysis of the first prong of the IFA test was reasonable.

C. *2nd Prong: Was it reasonable for the RAD to conclude that it would be reasonable for the Applicant, in his particular circumstances, to relocate to the proposed IFAs?*

[29] As stated above, to overcome the second prong of the IFA test, the Applicant needs to present concrete evidence of conditions that would jeopardize his life and safety in relocating to the IFA. I find that there was no such evidence before the RAD, and it was therefore reasonable for the RAD member to conclude that it was reasonable for him to relocate to the proposed IFAs.

[30] The RAD member looked at the totality of the evidence, including the profile of the Applicant as a Sikh man it was reasonable for him to relocate to the proposed IFAs. I find that the RAD member fully engaged with the Applicant's particular circumstances in a reasonable manner and by taking the relevant evidence and arguments into account. They articulated a clear chain of reasoning.

[31] I find that the RAD's analysis of the second prong to be reasonable.

VI. Conclusion

[32] The RAD reasons are transparent, intelligible and justified. The Application for Judicial Review is, therefore, dismissed.

[33] The parties did not propose a certified question and I agree that there is no question to be certified.

JUDGMENT IN IMM-9573-23

THIS COURT'S JUDGMENT is that:

1. The application for Judicial Review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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