

Federal Court



Cour fédérale

Date: 20250407

Docket: IMM-6376-24

Citation: 2025 FC 637

Ottawa, Ontario, April 7, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**GURVEER SINGH CHATTHA
SEHREET KAUR
MALAKPREET KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of decision of a Refugee Appeal Division [RAD], dated March 22, 2024, upholding the determination of the Refugee Protection Division [RPD] that the Applicants are neither Convention refugees nor persons in need of protection under section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, SOR/2002-227 [IRPA].

Background

[2] The Applicants are a family of three, Gurveer Singh Chattha [Principal Applicant], his spouse Malakpreet Kaur [Associate Applicant] and their daughter [Minor Applicant]. They are citizens of India.

[3] The Principal Applicant claimed that he was a vocal member and supporter of the Aam Aadmi Party (AAP), which he joined as a worker in 2015. The AAP is now the ruling government in Punjab. He claimed to fear persecution by a political opponent in the Congress Party named Ms. Razia Sultana, her husband, once the Director General of the Police [DGP], and their associated supporters including the Punjab police. Threats from Ms. Sultana began in 2016 after the Principal Applicant reported her to the election commission for bribing potential voters. Ms. Sultana and her supporters visited his home in December 2016 and threatened him with a gun. In January 2017, he received a threatening call from an unknown caller who claimed the Principal Applicant was speaking badly about Ms. Sultana. The Principal Applicant alleged he was arrested on February 3, 2017, the day before the election, threatened and assaulted by the Punjab police and released the following day when the election was over. After a period of normalcy following Ms. Sultana's election, he claims that he was attacked by unknown assailants on December 30, 2017.

[4] The Applicants fled to Canada on February 3, 2018. The Principal Applicant's Basis of Claim [BOC] narrative states that the Applicants never wanted to return to India but that, upon

learning from family members that police were allowing people to illegally occupy his properties in India, the Applicants immediately returned to India in May 2018.

[5] The Principal Applicant claimed that upon return to India he sought to make peace with Ms. Sultana, but that she responded violently. Further, that the Minor Applicant was kidnapped on February 18, 2019. The Applicants again fled to Canada on March 13, 2019. They filed a refugee claim on September 13, 2019.-The Principal Applicant submitted an updated and modified narrative that was received by the IRB on September 9, 2022. In this document, he alleged that since leaving India, agents of persecution have harassed and harmed his family members in seeking to locate and arrest him.

[6] The RPD rejected the Applicants' claims on October 25, 2022. The RPD found that the Principal Applicant was a low-level AAP supporter who volunteered during the 2017 election campaign, that the Applicants fear of harm by Ms. Sultana and her associates was not credible, and that the Applicants did not have a well-founded fear of forward-facing risk.

[7] The Applicants appealed to the RAD, which dismissed the appeal. That decision is the subject of this judicial review.

Decision Under Review

[8] The RAD accepted the Applicants' proposed new evidence, namely psychological reports for the adult Applicants.

[9] The RAD noted that the Applicants did not challenge the negative inference drawn by the RPD about their credibility which was based on their failure to seek refugee protection during their first trip to Canada. The RAD found that the Applicants had not demonstrated that they needed to return to India to deal with their property issues. The RAD also noted that the Applicants had not challenged, on appeal, the RPD's further negative credibility inference drawn from the Applicants' decision to wait nearly six months to make their refugee claim after returning to Canada. The RAD agreed with and adopted the RPD's reasons for these findings and drew a strong negative credibility inference about the Applicants' fear of returning to India.

[10] The RAD noted that the Applicants' claim is based on the Principal Applicant's role with the AAP, and found that the Principal Applicant's high-level or prominent role in the AAP had not been established. The RPD had previously reached the same conclusion because the Principal Applicant provided no corroborating evidence from the party and because his testimony described low-level involvement in party activities. The RAD assessed the evidence and likewise concluded that the Principal Applicant had failed to provide evidence or a reasonable explanation for the lack thereof, or to describe activities indicating that he played a significant or prominent role in the AAP. The RAD addressed the affidavits provided to corroborate the Principal Applicant's claim of having joined the AAP. It found that they lacked detail about his AAP activities and afforded them little weight in establishing his role as a prominent or vocal member.

[11] As to the alleged kidnapping of the Minor Applicant, the RAD rejected the Applicants' argument that the RPD had failed to consider this event. The RAD pointed out that the RPD had

found that the evidence and testimony on this issue was speculative and insufficient. The RAD then described the evidence and, based on same, agreed with the RPD.

[12] With respect to forward looking risk, the RAD noted that the RPD had found that Ms. Sultana had resigned her cabinet seat and, although she appeared to remain a member of the Congress Party, it had lost the 2022 election to the AAP. Her husband was no longer the DGP and his current occupation was unknown. The RPD found that these changes significantly affect the Applicants' future risk of persecution. Before the RAD, the Applicant disagreed and argued that Ms. Sultana will run for office again and she and her husband will retain their political power. For the reasons it stated, the RAD did not agree.

[13] With respect to the incidents alleged to have occurred after the Applicants' departure from India, the RAD found that the Applicants provided no evidence to corroborate their claim that the police raided the Principal Applicant's sisters' homes in November 2021. The RAD also considered the death certificate of the Principal Applicant's cousin's husband, as well as the death certificate for the Principal Applicant's uncle and an associated hospital record. The RAD concluded that this evidence did not serve to corroborate future risk of harm.

[14] Finally, the RAD held that the Applicants' other supporting documents were insufficient to establish their claim. The RAD afforded the psychological reports little weight noting that the reports were vague on how the conclusions about the Applicants' PTSD were reached, what indicia were used to justify the diagnoses, what the psychologist understood of the Applicants'

circumstances and how the diagnosis might have affected the Applicants comprehension of questions asked at their RPD hearing or the quality of their responses.

[15] Based on the totality of the record, the RAD found that the RPD did not err. Due to unresolved credibility concerns and insufficient evidence of forward-looking risk, the Applicants had not established that they face a serious possibility of persecution or, on a balance of probabilities, a likelihood of any of the harms under section 97 of the IRPA if they return to India.

Issue and Standard of Review

[16] The sole issue in this matter is whether the RAD's decision was reasonable.

[17] Reasonableness review asks a court to consider the outcome of a decision in light of the decision maker's reasoning process to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov*, 2019 SCC 65 at paras 15, 99).

Decision was Reasonable

[18] The Applicants argue that the RAD erred by drawing a negative credibility finding based on the Applicants' return to India and delay in applying for refugee status in Canada by failing to

assess s 97 of the IRPA and by unreasonably requiring corroborative evidence, assessing future risk and dismissing the psychologist's report. I will address each of these issues below.

- i. The RAD reasonably assessed the Applicants' credibility

[19] The Applicants submit that the RAD erred by upholding the RPD finding that they are not credible based upon their return to India and delay in applying for refugee status when they entered Canada for the second time. The Applicants submit that the RPD failed to consider cumulative grounds of persecution (citing *Ibrahimov v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1185 at para 19) and erred by drawing a negative credibility finding without properly considering the evidence and explanations. The Applicants allege that it was unreasonable to consider the Applicants' first trip to Canada in 2018 as indicating a lack of fear of persecution because their fear was still accumulating at that point, and because the Applicants reasonably explained that later events, including the alleged kidnapping of the Minor Applicant in 2019, forced them to finally seek permanent refuge.

[20] The Applicants submit that the circumstances and potential explanations for a delay in filing a refugee claim in Canada must be considered before concluding on that basis that an applicant lacks subjective fear (citing *Gurung v Canada (Citizenship and Immigration)*, 2010 FC 1097 at para 21). They allege that the RAD inadequately assessed their explanations as to why they delayed their application for refugee status and erroneously relied on RPD reasoning that misapprehended the circumstances of the Associate Applicant's prior work permit application.

[21] The Applicants acknowledge that their arguments on appeal were not “clearly articulated.” They nonetheless suggest that there is an “indication” that the Applicants challenged this issue before the RAD at paragraph 40 of their appeal submissions.

Respondent’s position

[22] The Respondent argues that the Applicants’ submissions regarding the RAD’s credibility finding with respect to their return to India and delay is a new argument improperly raised for the first time on judicial review. In the decision under review, the RAD expressly noted that the RPD’s credibility findings on these points had not been challenged. Further, the Applicants’ written submissions to the RAD make no reference to the RPD’s findings concerning their delay in claiming protection and their return to India. Issues that were not put to the RAD cannot be raised before this Court on judicial review because a RAD decision should not be impugned on the basis of a issue not put to it (citing *Gonzalez Perez v Canada (Citizenship and Immigration)*, 2024 FC 69 at para 40, citing *Sullivan v Canada*, 2024 FCA 7 at para 8; *Iribhogbe v Canada (Citizenship and Immigration)*, 2022 FC 501 at para 38, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers’ Association*, 2011 SCC 61 at paras 22-26 [*Alberta Teachers’ Association*]; *Mwaniki v Canada (Citizenship and Immigration)*, 2022 FC 1674 at para 33-34; *Akhelumele v Canada (Citizenship and Immigration)*, 2023 FC 993 at para 7).

[23] Further, the *Refugee Appeal Division Rules*, SOR/2012-257 [RAD Rules], s 3(3)(g) requires appellants to provide “full and detailed submissions” regarding the grounds of appeal that they wish the RAD to consider – which the Applicants did not do with respect to this issue.

Analysis

[24] The RAD Rules are clear about what is required when perfecting an appeal. Section 3(3) specifies that the appellants record must contain the listed documentations which includes:

(g) a memorandum that includes full and detailed submissions regarding

(i) the errors that are the grounds of the appeal,

(ii) where the errors are located in the written reasons for the Refugee Protection Division's decision that the appellant is appealing or in the transcript or in any audio or other electronic recording of the Refugee Protection Division hearing,

[25] The appellant's record submitted to the RAD by the Applicants' former counsel does not identify any errors that form the grounds of appeal or identify them in the RPD's reasons. Nor do the written submissions to the RAD engage with the RPD's credibility findings. They make no mention of the RPD's findings with respect to the Applicants return to India or their delay in claiming refugee protection when they returned to Canada. Paragraph 40, upon which the Applicants now rely to assert that they appealed the RPD's findings on those points, states:

The claimant was attacked by the goons and his daughter was kidnapped from the school. The panel did not take into consideration the events that compelled the claimants to leave India to save their lives. This is an error in the decision of the panel.

[26] This makes no mention of the Applicants' return to India or delay in claiming refugee protection.

[27] As held by Justice McDonald in *Broni v Canada (Citizenship and Immigration)*, 2019 FC 365 at para 15 [*Broni*]:

[14] The Applicant argues that, although this issue was not raised directly with the RAD, it can still be raised in the context of this judicial review as the RAD has an obligation to conduct an independent assessment of the evidence and of the RPD decision. In effect, the Applicant is arguing that even if he did not identify an error by the RPD, the RAD still has an affirmative obligation to identify errors of the RPD.

[15] While I agree with the Applicant that the RAD has an obligation to conduct an independent assessment of the evidence and of the RPD decision, the RAD does so within the parameters of Rule 3(3)(g). This *Rule* makes it clear that it is the Applicant's obligation, and not the RAD's obligation, to identify errors made by the RPD and to make submissions accordingly. It is neither logical nor reasonable to expect the RAD to search the record and find something to make the case for the Applicant. In fact, this approach has been specifically denounced in the guiding case of *Dhillon*.

[28] The Applicants attempt to force paragraph 40 of their former counsel's submissions to the RAD into a ground of appeal by casting the alleged kidnapping as a "precipitating incident" among the cumulative events that that caused the Applicants to flee India, which they assert RPD failed to consider. They also suggest that the issue is raised by the general submission that the RPD did not consider "the totality of the evidence" and reassert, as did the applicant in *Broni* - that the RAD must independently assess the evidence anew before reaching their decision (citing *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 at para 54).

[29] In my view, paragraph 40 of the appellants submissions asserts only that the RPD failed to consider why the Applicant fled – being an attack on the Principal Applicant and the alleged kidnapping. The RPD did address those issues, as did RAD, each finding the alleged kidnapping

to be speculative and that forward looking risk was not made out given the change in circumstances. The Applicants' argument attempts to contort their actual submissions to the RAD in an effort to avoid the reality that they did not contest the RPD's credibility findings with respect to their return to India and delayed refugee claim in their appeal to the RAD. It follows that Applicants did also not raise the specific concern that the RPD failed to consider the cumulative nature of the Applicants' persecution in reaching their finding on credibility. It is not open to the Applicants now raise these issues on appeal.

[30] When appearing before me, current counsel for the Applicant suggested that if the RAD upholds an unchallenged RPD credibility finding but also engages with that finding, then "the doors are opened" and this Court can consider the new arguments made before it. The Respondent disagrees.

[31] With respect to the RPD's negative inference based on the Applicants' return to India to prevent the occupation of their properties, the RAD stated that "prioritizing property over life" was inconsistent with their claim of (subjective) fear, and that "The Appellants have not challenged this finding". The RAD then goes on to say:

[15] I note in addition that I have considered whether the Appellant's limited education, life experience, and sophistication affected their evidence on these issues. I find that the Appellants have not demonstrated that they needed to return to India to deal with their property issues. A lease agreement signed in 2021 specifically states that, because "the first party [Mr. C] is in Canada. So, in his absent his parents are giving his share on lease." Therefore, even though Mr. C inherited his father's land in 2015 it is clear that his father could have managed the property issues without the Appellants having to return to India.

[32] I might agree that this opened the door to allow the Applicants to take issue with those specific findings of the RAD before this Court, though they did not do so. I do not agree that this particular section of RAD reasoning permits them to make an entirely new argument based on cumulative grounds of persecution, which was not an appeal ground put to the RAD.

[33] Nothing in the RAD's treatment of the negative credibility inference drawn by the RPD from the Applicants' nearly six-month delay to make their refugee claim opens the door for new arguments on cumulative grounds of persecution. The RPD noted that despite having the advice of counsel, the Applicants opted to apply for a Labour Market Impact Assessment (LMIA) and Work Permit before filing a refugee claim. The decision not to disclose their fear, and their reasons for not informing counsel, were found to be inadequate. The RAD did not build substantively on these points but rather agreed with and adopted the RPD's findings and noted that they were unchallenged by the Applicants.

[34] In sum, the RAD did not err in failing to consider this new ground of appeal that was not before it and the Applicants cannot now raise this issue on judicial review.

ii. The RAD did not err in failing to conduct a separate section 97 analysis

[35] The Applicants assert that the RAD erred by failing to consider whether there was an objective risk of harm to them under s 97 of the IRPA and submit that their evidence established, on the balance of probabilities, that they would be subject to the harms described under section 97 if returned to India. The Applicants cite case law describing key differences between a claim for protection under subsection 97(1) and section 96, including that subsection 97(1) has no

subjective component. They suggest that a decision maker's failure to analyse an applicant's evidence under section 97(1) may be a reviewable error if it is not apparent, looking at the decision as a whole, whether the analysis was done at the same time as the s 96 analysis (citing *Sida v Canada (Minister of Citizenship and Immigration)*, 2004 FC 901 at para 15 [*Sida*])

[36] The Respondent submits that there is no indication that the RAD did not consider, in their independent review, whether the Applicants were persons in need of protection under section 97 of the IRPA in addition to risk of persecution under s 96. They reiterate that the RAD reasonably concluded that the Applicants had not credibly established their claim under either section. The Respondent notes that the RAD's reasoning in support of that finding included that the Principal Applicant had not established his prominence in the AAP, that there was no forward-looking risk of harm because of the changes of circumstance and that the Applicants had not established other key incidents alleged, including the Minor Applicant's kidnapping. The Respondent characterizes the argument as an improper request that the Court to usurp the role of the decision maker to reweigh the Applicants' evidence.

[37] I note that jurisprudence establishes that dismissal of a claim under section 96 of the IRPA, including for lack of credibility, is not always determinative of a claim under subsection 97(1) due to key differences in the applicable legal tests (see, for example, *Agazuma v Canada (Citizenship and Immigration)*, 2021 FC 696 at paras 39-40; *Bouaouni v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1211 at para 41 [*Bouaouni*]). However, a separate analysis under section 97 is not always required and it may be permissible for the RAD to consider both simultaneously (*Sida* at para 15; see also *Ikeme v Canada (Immigration, Refugees*

and Citizenship), 2018 FC 21 at para 40 [*Ikeme*], citing *Bouaouni* at para 41). For example, negative credibility findings can dispose of a claim under section 97 absent a separate analysis unless there is independent and credible evidence capable of supporting a positive disposition of the claim (*Ikeme* at para 41, citing *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at para 3).

[38] In this matter, negative credibility findings of the RPD were unchallenged and/or upheld by the RAD. Thus, it was open to the RAD to dispose of the claim under section 97 without a separate analysis absent independent and credible evidence capable of supporting such a claim (*Ikeme* at para 41). The RAD's findings as to the RPD's negative credibility finding concerning return to India and delay in claiming asylum in Canada are addressed above. And, as noted by the Respondent, the RAD also considered the Principal Applicant's testimony and lack of corroborating evidence with respect to his membership and role in the AAP and drew another negative credibility inference about that role. This finding relied on an assessment of supporting affidavits which the RAD found lacked detail about the Principal Applicant's role and were therefore afforded little weight in establishing his role as a prominent or vocal AAP member.

[39] The RAD also considered changes in circumstances that affected the objective basis of the Applicants' future risk, namely the loss of Ms. Sultana and her husband's political prominence and the lack of prominence or continued political involvement by the Principal Applicant. The RAD concluded that Ms. Sultana had no reason to continue a vendetta against the Principal Applicant, and that the circumstances had changed so profoundly that the risk no longer exists. Further, the RAD found that the Applicants had not established that the alleged

kidnapping of the Minor Applicant had occurred and that there was no sufficient credible evidence to support the occurrence of other alleged incidents.

[40] The RAD concluded:

[45] Having assessed the totality of the record, I find that the RPD did not err. Due to unresolved credibility concerns and insufficient evidence of forward-looking risk from Ms. Sultana and her associates, the Appellants have not established that they face a serious possibility of persecution or, on a balance of probabilities, a likelihood of any of the harms under section 97 of the *Immigration and Refugee Protection Act* (IRPA), if they return to India.

[41] Given the RAD's credibility findings, it was not obliged to undertake a separate analysis of the Applicants' evidence under section 97 of the IRPA. I also agree with the Respondent that the Applicants essentially ask the Court to reweigh the evidence, which is not its role.

iii. Corroborating evidence

[42] The Applicants submit that the RAD unreasonably demanded corroborating evidence. They assert that the RAD fundamentally misapprehended the basis of the risk to the Principal Applicant. According to the Applicants, the Principal Applicant's persecution by Ms. Sultana was not attributable to his role as an AAP member of a certain rank or level of involvement. Rather, the basis of risk was his ability to garner support for the AAP and his reporting of Ms. Sultana's bribery to the election commissioner. The Applicants submit that because the Principal Applicant did not claim to be an AAP member of high rank or involvement, but one who was active and vocal enough to attract attention and subsequent threats by Ms. Sultana, it was an error for the RAD to demand evidence corroborating his rank and involvement.

[43] The Respondent submits that that a core allegation of the Principal Applicants' claim was that he was a "vocal" and involved member of the AAP, "capable of getting many votes" and that he worked against Ms. Sultana during the election and influenced people to vote against her. Further, the notion that the Principal Applicant's risk was attributable to him being a high-ranking member of the AAP was put to the RAD by the Applicants in their appeal memorandum. Accordingly, the RAD properly considered whether the Principal Applicant had established that he was a vocal member of the AAP capable of receiving the attention of Ms. Sultana, a high-level member of the Congress Party. The Principal Applicants' lack of evidence corroborating his AAP membership and his description of his involvement did not establish that he was a prominent AAP member. His failure to obtain evidence of his membership or to reasonably explain why he had not done so reasonably drew a negative credibility inference (*Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paras 28 – 36 [*Senadheerage*]; *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at para 32-33, citing *Samseen v Canada (Citizenship and Immigration)*, 2006 FC 542 at para 30. Further, where credibility is already at issue, "further negative credibility inferences can be drawn if the claimant is unable to provide an explanation for the lack of reasonably expected corroborative evidence" (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 25).

[44] I note that the RPD was satisfied that the Principal Applicant was a "low level" AAP supporter, despite the lack of objective documentation party membership, but found no forward-facing risk related to his involvement with the AAP. This was because of the Principal Applicant's low level and brief support of the AAP and his testimony that he did not continue to

engage in any political activities after 2017 election, that he is no longer affiliated with the AAP and that he would not resume ties with it if he returned to India.

[45] In its reasons, the RAD accurately characterized the Principal Applicant's BOC narrative as premised on his AAP involvement. In his narrative he described himself as a "vocal member," "great supporter" and then in 2014 as joining AAP as a "worker" who participated in regional work. He later observed and reported Ms. Sultana's election fraud. In my view, the RAD did not misapprehend the basis of the Principal Applicants' claim.

[46] On appeal to the RAD, the Applicants challenged the RPD's finding that the Principal Applicant had a low involvement with the 2017 election, asserting his involvement was as an active member and that this was of great concern to Ms. Sultana. Further, that the Principal Applicant's reporting of her vote buying was not that of low-level involvement.

[47] The RAD found that the Applicants did not provide any evidence of AAP involvement, such as a membership card or a letter from the AAP, to confirm his membership. The RAD did not accept as reasonable his explanation for why he did not seek to obtain such evidence over the three years between filing his refugee claim and the RAD hearing, being that he had cut ties with the AAP because they did not assist him when he was assaulted and threatened and therefore did not want any contact with them. In rejecting that explanation, the RAD noted that Principal Applicant was represented by experienced (former) counsel before the RPD and ought to have known that he needed to establish his membership in the AAP to demonstrate the role he played and his importance in swaying the vote against Ms. Sultana.

[48] In my view, given the lack of any evidence to support his claim of AAP membership at any level, the RAD did not unreasonably expect the Applicant to provide corroborative evidence. It was open to the RAD, given its negative credibility findings and the unsatisfactory explanation as to why the Principal Applicant had not tried to obtain evidence of his membership, to draw a negative credibility inference about the Principal Applicant's role within the AAP, which it did.

[49] Before the RAD, the Applicants argued that the Principal Applicant's reporting of Ms. Sultana's vote buying was evidence of his high-level involvement in the AAP. In response to that submission, the RAD stated that it agreed with the RPD that the Principal Applicant's description of distributing caps and flags and visiting nearby villages to help canvass for votes did not describe high-level involvement. Nor had the Principal Applicant testified that he reported Ms. Sultana's bribing of voters because of any particular role he held in the party. The RAD concluded that, considered globally, the evidence was insufficient to establish that the Principal Applicant was a prominent AAP member. Rather, the evidence established that he became a member of AAP in 2015, that he had volunteered his time to help the party candidate campaign in the 2017 election that they subsequently lost, and that he stopped supporting the party after he came to Canada in 2019.

[50] In sum, the RAD did not misapprehend the basis of the risk to the Principal Applicant. The RAD recognized that any future risk arose from his alleged AAP involvement, including his reporting of Ms. Sultana's vote buying. Nor did the RAD unreasonably demand corroborating evidence to establish the Principal Applicant's involvement and his claimed role within the AAP.

iv. Assessment of future risk

[51] Similarly, the Applicants assert that the RAD erred in its assessment of future risk by drawing an adverse inference from the fact that the Applicant is no longer an AAP member. According to the Applicants, the basis for the Principal Applicant's ongoing fear of persecution was that Ms. Sultana and her associates were motivated to harm the Principal Applicant because he had denounced her for taking a bribe, a matter unrelated to his membership in the AAP. Further, the fact that Ms. Sultana had left politics was irrelevant because the evidence disclosed that she continued to exert influence. The Applicants submit that the RAD unreasonably speculated that the changes to Ms. Sultana's position and the fact that the Congress Party lost the election to the AAP meant that the Applicants would not face future risk. They note that nothing before the RAD suggested the threat had disappeared and emphasize the Principal Applicants' explanation that Ms. Sultana and her husband's power and influence persists in India.

[52] I do not agree with the Applicants that the RAD's future risk assessment was based on speculation (*Mohamathu Zubair* at paras 30 – 32). The RAD noted that when the Applicants left India in 2019, Ms. Sultana had won the election, she was a Congress Party cabinet member, and her husband was the DGP. However, the Congress Party lost the 2021 election to the AAP, although Ms. Sultana appeared to remain a member of the Congress Party. Her husband was no longer the DGP, and his current occupation was unknown. The RPD had found that these changes significantly affected the future risk to the Principal Applicant. Before the RAD, the Applicants disagreed with that finding, asserting that Ms. Sultana will run for office again and that the couple will regain their political power.

[53] The RAD agreed with the RPD and held that, even assuming that agents of persecution threatened and assaulted the Principal Applicant due to his conduct in 2016 and 2017, circumstances have changed so profoundly since that time that the risk no longer exists. The Principal Applicant had not established that he held a prominent position with the AAP, he has no contact with it now nor any desire to support the party. The Principal Applicant had not established that his presence in India and his involvement in the election had any meaningful impact on Ms. Sultana's political wins or losses. Therefore, the evidence did not establish, on a balance of probabilities, that she has any reason to continue to try to harm the Principal Applicant. Unlike in *Mohamathu Zubair*, relied on by the Applicant on this point, the RAD provided an explanation based on the record before it linking the circumstantial change noted to their prospective risk analysis.

[54] And while I appreciate that the Applicants now try to refocus future harm on the whistleblowing, this does not assist them. First, the Principal Applicant's claim was that he was at risk because he opposed Ms. Sultana and because he denounced her. He offers no reason for doing so other than his support of and involvement with the AAP. I do not agree that the whistleblowing was not related to his AAP involvement. Further, the fact that Ms. Sultana no longer holds elected office is not in dispute and it is speculative to assert that she will run and be elected again. The Applicants provided no evidence to support this view. Even if she were to do so, as the RAD held, the Principal Applicant's prior actions were with respect to Ms. Sultana's efforts to get elected in the election held in February 2017. This does not support a forward-looking risk given that, despite the whistle blowing, Ms. Sultana was elected and not defeated in 2017 and that the Principal Applicant is no longer an AAP member and does not intend to

resume his AAP involvement. There remained no reason for her and her associates to harm the Principal Applicant should he return to India and the Applicants provided no evidence to the contrary. Accordingly, the RAD's finding was grounded on the evidence and was reasonable.

[55] With respect to the alleged kidnapping of the Minor Applicant, the RAD found that the evidence is that when the Associate Applicant went to pick up the Minor Applicant from school, the Minor Applicant was not there. She was located by a neighbour playing in a playground some distance away and was returned to her parents that same day. The neighbour's affidavit does not refer to kidnapping or explain why the Minor Applicant might have been missing from school. There were no demands made that would indicate a kidnapping had occurred. Given this evidence, the RAD agreed with the RPD that it was too speculative to conclude that Ms. Sultana and her associates kidnapped the Minor Applicant.

[56] The Applicants submit that the RAD erred in unreasonably dismissing their evidence and testimony about the Minor Applicant's kidnapping merely because no demands were made for the child. They submit that the RAD did not "present alternate explanations to this bizarre event...", that they presented a "reasonable hypothesis" and that the RAD "should have considered whether to give the benefit of the doubt to the Applicant in these circumstances".

[57] I do not agree that the RAD dismissed the Applicant's testimony and evidence about the kidnapping on the basis that no kidnapping demands were made. The RAD did consider the Applicants' evidence and testimony regarding this incident, including the affidavit of Kulwinder Singh, which states only that when returning from his fields he saw the Minor Applicant "alone

in our park” he then brought her home to her parents where he learned that she was missing from school. The Principal Applicant’s testimony was only that when the adult Applicants went to school to pick up the Minor Applicant she was not there and was found “at our village playground” and that the school was two or three villages away. None of the evidence indicates a kidnapping and I see no error in the RAD’s reasoning on this point. Nor is there merit to the Applicant’s argument that the RAD an obligation to present alternate explanation.

[58] The Applicants also argue that the RAD unreasonably assessed their evidence regarding alleged police abuses of his family in India post-dating their arrival in Canada. They suggest that the RAD placed an excessively high evidentiary burden on them by requiring corroborating evidence in addition to the death certificates of the Principal Applicant’s cousin’s husband and uncle. They further argue that the RAD unreasonably dismissed the Principal Applicant’s explanation that his brothers in law informed him of the raid of his sisters’ homes in 2021.

[59] However, as discussed above, in light of its prior negative credibility findings, the RAD was entitled to require corroborative evidence if such evidence is reasonably available and there is no reasonable explanation for its absence (*Nadarajah v Canada (Citizenship and Immigration)*, 2022 FC 171 at para 13, citing *Senadheerage* at para 36).

[60] The RPD found that there was no evidence to corroborate that the police raided the homes of the Principal Applicant’s sisters and that the Principal Applicant’s explanation of how he learned about the raids to be speculative. The RAD noted that the Applicants had not challenged this finding. It agreed that there was insufficient credible evidence to establish that

the raids occurred. In fact, the Applicants' submission to the RAD does not address this issue. It is not open to them to now challenge this finding on judicial review. And in any event, they merely assert that their explanation – rejected by the RPD - was not implausible.

[61] As to the death certificates, the RAD considered the death certificate of the Principal Applicant's cousin's husband, which did not disclose his cause of death, and found no corroborating evidence that he died due to his arrest and torture by the police or in a manner connected to efforts by the police to find the Principal Applicant. The RAD stated that such corroborating evidence was warranted given the RAD's concerns with the Principal Applicant's credibility. The RAD also considered the death certificate for the Principal Applicant's uncle and an associated hospital record. The latter recorded injuries to the uncle's chest, lumbar region and legs which, as the RAD accepted, could corroborate police abuse. However, as the RAD had found the evidence insufficient to establish that the cousin's husband was killed because of the police pursuit of the Principal Applicant, consequently, the death of the uncle said to be seeking justice for the cousin's husband's death also failed to corroborate this.

[62] I also do not agree that the RAD unreasonably placed an excessively high evidentiary burden on the Applicants with respect to the death of the Applicant's cousin's husband. Given the RAD's credibility concerns, it was reasonable to expect corroborating evidence on this issue which did not, as the Applicants suggest, have to come from the police. As to the uncle's death certificate, the Applicants submit that because the uncle was arrested immediately after he sought justice for his son-in-law's death, "it is established" that the death of the uncle was connected to Principal Applicant's cousin's husband's death. But, as noted, the RAD found the evidence

insufficient to establish that the cousin's husband was killed in relation to the Principal Applicant. Consequently, the RAD did not unreasonably find that the death of the uncle said to be seeking justice for cousin's husband failed to corroborate this. The Applicants do not identify an error in the RAD's reasoning, they simply prefer a different assessment of the evidence.

[63] It is also of note that the Applicants only submission to the RAD on these points is a brief reference the existence of the medical certificate and death certificate of the Principal Applicant's uncle. The RAD duly addressed that evidence.

[64] In sum, the RAD's finding that the Applicants failed to establish these incidents is not unreasonable in light of the record before the RAD and the legal constraints bearing upon it (*Vavilov* at para 105).

[65] Finally, the Applicants allege that the RAD unreasonably considered the psychologist reports. They submit that the RAD acted inconsistently by finding the psychologist to be an expert but then assigning low weight to the reports "by detailing what would have been necessary to establish mental health diagnoses; namely, reference to body language and other indicia." They submit that the RAD erred by engaging in an overzealous treatment of the report and unreasonably found that the reports do not reference how the Applicants' PTSD diagnoses would impair their ability to testify before the RPD and RAD.

[66] I agree with the Applicants that the RAD erred in its assessment of their psychological reports. The RAD's discounting of this evidence based on lack of indicia to justify the PTSD

diagnoses may constitute, as in *Akhtar*, at para 14, overzealous review for deficiencies in medical evidence. The RAD's reasoning that the reports do not contain sufficient diagnostic indicia is also unjustified in light of the reports themselves, which indicate DSM-5 PTSD diagnostic requirements and how they are met by both Applicants. The reports also note symptoms exhibited by both Applicants, including "[i]nability to recall key features of the traumatic event."

[67] However, the Applicants made no submissions to the RAD about the reports aside from a written declaration which reiterates the PTSD diagnosis and generally asks that the RAD consider the *Chairperson's Guideline 8: Accessibility to IRB Proceedings — Procedural Accommodations and Substantive Considerations*. The Applicants cannot, on judicial review, impugn the RAD for unreasonably ignoring the report's statements about how their PTSD symptoms "would affect their ability to testify to past events at a hearing," when they failed to raise this argument before the RAD (*Alberta Teachers' Association* at paras 22-26). Even before this Court they do not relate that finding to any determination of the RAD. In fact, none of the RAD's credibility findings were concerned with gaps in the adult Applicant's memories of events such as errors and omissions in their BOC narratives or oral testimonies.

[68] In any event, this alleged error is not sufficiently central to render the decision unreasonable (*Vavilov* at para 100) as it is not apparent that the content of the reports would alter the RAD's analysis of the claims under sections 96 and 97 of the IRPA.

Conclusion

[69] For all of the above reasons I find the RAD's decision to be reasonable.

JUDGMENT IN IMM-6376-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question was proposed for certification and none arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6376-24

STYLE OF CAUSE: GURVEER SINGH CHATTHA, SEHREET KAUR,
MALAKPREET KAUR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 25, 2025

JUDGMENT AND REASONS: STRICKLAND J.

DATED: APRIL 7, 2025

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