

Federal Court



Cour fédérale

Date: 20250502

Docket: IMM-14450-23

Citation: 2025 FC 805

Ottawa, Ontario, May 2, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

ASHMEDH SINGH SURI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ashmedh Singh Suri, made a claim for refugee protection because of his fear of the police and intelligence agencies in India. The Refugee Protection Division (“RPD”) rejected his claim on the basis that he could safely relocate to another part of India. The Applicant appealed this decision. The Refugee Appeal Division (“RAD”) confirmed the RPD’s

decision, finding he had a viable internal flight alternative (“IFA”). The Applicant challenges the RAD’s decision on judicial review.

[2] The RAD’s IFA analysis is the sole issue on judicial review. The key dispute centres on the RAD’s finding that the Punjab police are the sole agent of persecution. This finding was central to the RAD’s determination that the Applicant had a viable IFA. The RAD reasoned that, because only a local police force (the Punjab police) are interested in the Applicant, he could safely relocate to Mumbai or Kolkata.

[3] The Applicant challenges the reasonableness of the RAD’s finding that the Punjab police are the sole agent of persecution, where the RAD also accepted that his father has been transferred and is held by authorities in Kashmir state.

[4] I agree with the Applicant that the RAD’s reasoning on this critical finding does not “add up” given the RAD’s other findings and the evidence before it (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 102-104). Accordingly, the matter must be redetermined.

II. Background to the Refugee Claim

[5] The Applicant is a citizen of India. In May 2022, while the Applicant was in Canada, his father was arrested. Family members learned that the police wanted to question him about longtime family friends (a man named JK and his father), who had fled India to Pakistan and were advocating for the autonomy of Jammu and Kashmir.

[6] The Applicant's father was beaten and tortured in prison in Punjab and then transferred to Kashmir that same month. The Applicant and his family understand that he is still detained in Kashmir but they have not been able to communicate with him since he was transferred.

[7] The Punjab police visited the Applicant's mother in June 2022, looking for the Applicant and asking her about the relationship between the Applicant and JK (who was the Applicant's childhood friend). The police informed the Applicant's mother at that time that JK had gone to Pakistan and was speaking out against the Indian army and government. Since then, the Punjab police continue to regularly approach the Applicant's mother and her neighbours to inquire about the Applicant's return to India.

III. Analysis

[8] The determinative issue is the RAD's IFA analysis and in particular, its key finding that the sole agent of persecution is the Punjab police. The parties agree, as do I, that I ought to review the RAD's determination on a standard of reasonableness (*Vavilov* at para 23).

[9] The RAD, like the RPD, made no negative credibility findings. The RAD accepted the following facts:

- (i) the Applicant was childhood friends with JK, who is a vocal supporter of the Jammu and Kashmir autonomy movement and is advocating for this from Pakistan;
- (ii) the Applicant's father is also a political supporter of the Jammu and Kashmir autonomy movement;

- (iii) in May 2022, the Applicant's father was arrested and detained by the Punjab police and they questioned him about his connections to JK and JK's father;
- (iv) the Applicant's father was transferred to Kashmir and the family has not heard from him since May 2022;
- (v) the Punjab police approached the Applicant's mother in June 2022 and asked about the Applicant's whereabouts and his knowledge of JK; and
- (vi) since June 2022, the Punjab police have continually asked the Applicant's mother and neighbours about the Applicant's whereabouts.

[10] The RAD found that there is insufficient evidence to support the Applicant's claim that Indian authorities, outside of the Punjab police, are interested in him. In coming to this conclusion, the RAD noted the following: (i) the Punjab police had been asking about his whereabouts, (ii) the Punjab police did not tell his family that other security agencies were interested in him, (iii) there is no warrant (state or national) for his arrest, and (iv) there is "no clear indication" that the central government and/or the authorities in Kashmir are working together in the Applicant's father's investigation.

[11] The Applicant argued that while he could not present direct evidence confirming the involvement of the central government and/or the authorities in Kashmir, considering the totality of the circumstances and evidence, it is unreasonable to find that only the Punjab police are involved. The Applicant relied on three pieces of evidence to support this assertion. First, his mother's affidavit where she asserts that his father, before his transfer to Kashmir, told her that the security agencies in Kashmir were interested in questioning him. Second, the very fact that

his father was transferred to Kashmir. Third, that the Indian constitution provides that the central government can “extend powers and jurisdiction of members of one state police force to another state with its consent.” On this last point, the Applicant argues that either another state is involved, Kashmir, or the central government has allowed the Punjab state to extend its power to detain his father in Kashmir. In either case, the Applicant argues, it is unreasonable to find that the sole agency involved is the Punjab police.

[12] The RAD found the Applicant’s arguments on the involvement of other agencies to be based on “conjecture”. The RAD found there is insufficient evidence that the Applicant’s father’s transfer involved another state or the central government. The RAD did not explain on what basis it believes that the Punjab police can transfer and detain an individual in another state without the involvement of another agency. This determination, in my view, follows from the RAD’s finding that it had not been established that another state or the central government or security agency had been involved in the Applicant’s father’s detention.

[13] The Applicant’s concern is straightforward: if you accept that my father was transferred and is detained in Kashmir, then it cannot only be the Punjab police that are involved. Reading the RAD’s reasons as a whole, the Applicant’s key concern, while acknowledged, is not meaningfully addressed. The RAD’s view that there is insufficient evidence of another agency’s involvement seems to assume that if a national agency or another agency was involved, the family would have been told so. The problem is, the RAD relied on no evidence to support this assumption.

[14] As explained by Justice Turley, “While decision makers are entitled to significant deference when making sufficiency of evidence findings, they must be explained, with reference to the evidence on the record or by providing a rationale for the finding” (*Allahbakhshihafshejani v Canada (Immigration, Refugees and Citizenship)*, 2023 FC 1614 at para 15 citing *Ahmed v Canada (Citizenship and Immigration)*, 2022 FC 618 at para 35; *Sarker v Canada (Citizenship and Immigration)*, 2020 FC 154 at para 11; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 [*Magonza*] at para 35). As noted by Justice Grammond in *Magonza*, in reviewing an insufficiency of evidence finding, “it is useful to ask: what other evidence could reasonably have been brought?” (*Magonza* at para 58). I do not find that the RAD considered how the Applicant could have provided evidence to demonstrate another agency was involved in his family’s particular circumstances. Ultimately, I find the RAD’s reasoning does not “add up” and more had to be done to explain its reasoning on this critical issue.

[15] I say it is a critical issue because the RAD’s IFA analysis, which was determinative of the claim, is framed based on the Punjab police being the only agent of persecution. As I have found this premise to be unreasonable, the matter must be redetermined.

[16] The Respondent drew my attention to a number of cases of this Court involving persecution claims against the Punjab police, where the RAD’s IFA findings were upheld. I do not find these cases are relevant to the issue on which I decided this case needs to be determined, namely, the RAD’s analysis that the Punjab police were the only agent of persecution.

[17] Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-14450-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision of the RAD dated October 31, 2023 is set aside and sent back to be redetermined by a different member; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-14450-23

STYLE OF CAUSE: ASHMEDH SINGH SURI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 5, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: MAY 2, 2025

APPEARANCES:

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