

Federal Court



Cour fédérale

Date: 20250505

Docket: IMM-4917-24

Citation: 2025 FC 813

Toronto, Ontario, May 5, 2025

PRESENT: Madam Justice Go

BETWEEN:

HIMMAT SINGH AND SURJEET KAUR

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Himmat Singh [Principal Applicant] and his spouse Ms. Surjeet Kaur [together the Applicants] are citizens of India and Afghanistan. The Applicants are Sikhs who were born and married in Afghanistan.

[2] The Applicants fled Afghanistan for India in 1992. In the following year, the Applicants claimed refugee protection in India and proceeded to live in Delhi for 27 years. The Applicants obtained Indian citizenship documents sometime in 2007 by paying certain Indian officials. Later, the Applicants obtained Indian passports in the same manner.

[3] The Applicants came to Canada in January 2020 and filed refugee claims in March 2021 based on their fear of persecution as Afghan Sikhs living in India and not being accepted as Indian citizens. Moreover, the Applicants alleged they faced a risk to their lives at the hands of their former landlord, who had assaulted the Principal Applicant.

[4] The Refugee Protection Division [RPD] found that the Applicants are not Convention refugees nor persons in need of protection. The determinative issue for the RPD was the existence of an Internal Flight Alternative [IFA] in Mumbai. The RPD assessed the Applicants' claim against India, as it considered the Applicants to have Indian citizenship and thus had a country of citizenship to which they could return.

[5] The Refugee Appeal Division [RAD] dismissed the Applicants' appeal and confirmed the RPD's finding that the Applicants are neither Convention refugees nor persons in need of protection [Decision].

[6] The Applicants bring this application for judicial review, arguing that the RAD was unreasonable in finding that the RPD did not err in determining that the Applicants had not

rebutted the presumption that they are Indian citizens. I dismiss the application as I find the Decision reasonable.

II. Preliminary Issues

[7] Prior to the hearing, I sought the parties' submissions after noting that the Application Record does not contain an affidavit but contains several documents that are not supported by an affidavit. Further, the Applicant's memorandum of law and argument makes certain factual assertions without providing a personal affidavit from the Applicant, or otherwise indicating the basis for these assertions. I asked for the parties' submissions on the admissibility of the documents and factual assertions.

[8] The Respondent takes no position with respect to materials that were reproduced as part of the Certified Tribunal Record. The Respondent also does not oppose to the consideration of the transcripts included in the Application Record. However, the Respondent submits that any factual assertions contained in the Applicant's Memorandum of Argument for which no factual basis has been cited ought not to be considered.

[9] The Applicants provided no submission despite being provided with an opportunity to do so. At the hearing, the Applicants agreed with the Respondent's position.

[10] I accept the Respondent's submission. As such, I will not consider any factual assertions contained in the Applicant's Memorandum of Argument for which no factual basis has been

cited. I will however consider the Applicant's written submissions to the RAD and the associated transcripts of the RPD hearings.

III. Issues and Standard of Review

[11] The Applicant raises the following issue, namely, whether it was reasonable for the RAD to find that the RPD did not err in determining that the Applicants had not rebutted the presumption that they are Indian citizens.

[12] The Applicants makes no submission on the standard of review. I agree with the Respondent that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25. The Court should assess whether the decision bears the requisite hallmarks of justification, transparency and intelligibility: *Vavilov* at para 99. The Applicants bear the onus of demonstrating that the decision was unreasonable: *Vavilov* at para 100.

IV. Analysis

[13] The crux of the Applicants' position is that both the RPD and the RAD unreasonably refused to consider how the Applicants obtained their Indian citizenship and passports. Specifically, the Applicants claim that their Indian passports cannot be genuine as they obtained such passports by paying bribes to people they met outside a government office.

[14] The Applicants acknowledge that there is a presumption that a refugee claimant is a citizen of the country that issued their passport. However, the Applicants highlight that this presumption can be rebutted: *Mijatovic v Canada (Citizenship and Immigration)*, 2006 FC 685 [Mijatovic] at para 26.

[15] Citing *Mijatovic* and *Radic v Canada (Citizenship and Immigration)*, [1994] FCJ No 1376, 85 FTR 65 [Radic], the Applicants submit that their passport is evidence of citizenship unless its validity is contested. The Applicants point out that both *Mijatovic* and *Radic* dealt with the issue of passports of convenience. Similarly, the Applicants contest the validity of their Indian “citizenship” and submit that they hold a different citizenship—that of Afghanistan.

[16] Referring to the excerpt from the UNHCR Handbook, the Applicants argue that where there is a challenge to the validity of a passport, if information is not available from the issuing country, the examiner will have to decide on the credibility of the applicant’s assertion in weighing all elements of the applicant’s story. The Applicants maintain that the RPD found the Principal Applicant’s testimony to be credible. Thus, the question becomes whether the RPD’s decision on this issue was reasonable.

[17] The Applicants take issue with the RPD’s finding that “although the [Applicants] may have paid a lot of money for a process to obtain their passports” it “does not automatically mean the process was improper or fraudulent, but only that the result was worth that much to the [Applicants] and that it is apparent someone had helped the [Applicants] to navigate the Indian bureaucracy to obtain citizenship.”

[18] The Applicants further challenge the RAD's confirmation of the RPD decision based on the following two reasons: First, it is not the RPD or the RAD's job to prove or establish that the Applicants' Indian passports and citizenship are genuine; the burden is on the Applicants. Second, the Applicants may have paid bribes in India to "overcome illegal obstacles put in their way or to expedite the process," but "they were legally entitled to Indian Citizenship, and they have not established they are not Indian citizens."

[19] The Applicants submit the fact that although paying bribes may be commonplace in India it does not convert the paying of bribes to being a proper way to obtain a passport or citizenship. The Applicants maintain that citizenship obtained by the paying of bribes cannot be genuine, and that if the Applicants were entitled to Indian citizenship and they were being denied improperly by people demanding bribes, the Applicants should have brought a Mandamus application. The Applicants also submit that obtaining documents by paying bribes would be considered unacceptable in Canada and should not be considered proper in India.

[20] I am not persuaded by the Applicant's somewhat disjointed and confusing arguments, particularly with respect to the last point about a Mandamus application. It is not at all clear to me why such an application should have been brought, and how it is relevant in determining the reasonableness of the Decision.

[21] I also note that the Applicants attempt to draw a comparison between what is acceptable in India and Canada without citing any evidence.

[22] Further, the only decision under review was the decision rendered by the RAD, not the RPD. Any arguments that the Applicants make about the RDP decision are therefore not directly on point.

[23] As the Applicants concede, the RAD conducted its own independent assessment before concluding that the Applicants had not rebutted the presumption that they are Indian citizens, on a balance of probabilities. In reaching this conclusion, the RAD set out numerous reasons, including the following:

- The Applicants did not firmly assert that they were not Indian citizens, but rather that they might be “deprived of their citizenship” in the future because it had been obtained by fraud, false representation, or concealment of a material fact. The RAD found this to be speculative because the Applicants had not established that they had obtained their citizenship through any of these means.
- The RAD rejected the Applicants’ counsel’s argument that they could not have taken the Oath of Citizenship, so their citizenship was in question. The RAD found because the Applicants were never asked about this, there was no evidentiary basis to support an analysis on this point.
- The RAD found that the balance of evidence further supported the legitimacy of the citizenship documents, even if the Applicants had paid money to obtain them. Such evidence included:
 - References in the Applicants’ BOC forms and testimony that they were naturalized citizens of India;
 - The fact that Indian officials only granted the Applicants’ citizenship after they provided a number of documents, such as their Afghan passports, UNHCR relocation certificates, and their rental agreement;
 - The fact that the Applicants described the process to obtain their Indian citizenship as being detailed with “quite a lot of investigations” before they were issued passports;
 - The fact that the country conditions evidence for India states that “the authenticity of passports is more reliable than other documents;” and
 - The fact that, by law, Indian residents can apply for citizenship after residing in India for seven years, and they had been residing in India

for approximately 17 years by that time, thereby make them legally entitled to Indian citizenship.

[24] As the Respondent points out, and I agree, the Applicants fail to engage with any of these specific findings on which the RAD based its decision. By failing to point to any reviewable error arising from these findings, the Applicants' arguments thus amount to a mere disagreement with the RAD's conclusion.

V. Conclusion

[25] The application for judicial review is dismissed.

[26] There is no question to certify.

JUDGMENT in IMM-4917-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question to certify.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4917-24

STYLE OF CAUSE: HIMMAT SINGH AND SURJEET KAUR v MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: GO J.

DATED: MAY 5, 2025

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