Federal Court  Cour fédérale

Date: 20250529

Docket: IMM-6661-24

Citation: 2025 FC 971

Toronto, Ontario, May 29, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

ARUNDEEP SINGH NIJJAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board. In that decision, the RAD confirmed a decision of the Refugee Protection Division [RPD] to reject the Applicant's claim for refugee protection.

[2] For the brief reasons that follow, I will dismiss this application for judicial review.

II. BACKGROUND

A. *Facts*

[3] The Applicant, Arundeep Singh Nijjar, is a Sikh citizen of India, from the state of Punjab. He alleges a personalized risk of torture, risk to life, or risk or cruel and unusual treatment from the father of a former classmate, and his connections in the Punjab police. The former classmate is of a different faith (Hindu) and a higher caste, and wanted to marry the Applicant, despite his objections. When the classmate's father found out about her intentions, he threatened to kill the Applicant, threatened and assaulted the Applicant's father, and made false allegations to the police that the Applicant is a Sikh separatist. As a result of those allegations, Mr. Nijjar was illegally detained and tortured by the police. His father attempted to report these events, but the police refused to take the complaint. Mr. Nijjar fled India and arrived in Canada in May 2019. He made a claim for refugee protection. Since then, the police have continued to search for Mr. Nijjar, torturing his father in order to find his whereabouts.

[4] The RPD refused the Applicant's claim based on an available internal flight alternative [IFA] in Delhi. He appealed to the RAD.

B. *Decision under Review*

[5] The RAD confirmed the RPD's determination that Mr. Nijjar is not a person in need of protection. The determinative issue was, once again, the availability of an IFA in Delhi. On the first prong of the test, the RAD found that while the agent of harm [AOH] may have local influence, as evidenced by his ability to use the local police to target the Applicant and his

family, there was insufficient evidence that this influence extends beyond the local region. As a result, the RAD confirmed the RPD's finding that the Applicant had failed to establish that the AOH had the means to locate Mr. Nijjar in the IFA. The RAD considered the Applicant's allegations that the AOH has links to the police, to the Punjab Legislative Assembly, or to Hindu fundamentalist groups, but found insufficient evidence of this, except for vague information provided by the former classmate over a cup of tea in 2019.

[6] The RAD also rejected the Applicant's argument that, due to high levels of corruption, the AOH would be able to bribe the police in order to find his whereabouts. It found that, since the detention was extrajudicial in nature, Mr. Nijjar's information would not be in the CCTNS, and therefore, the classmate's father would not be able to find the Applicant's information even if he were able to bribe the police. The RAD equally found that the AOH would not be able to utilize the tenant verification system to locate Mr. Nijjar, given country conditions evidence that the system is largely for show and is not functional enough for corrupted police officers to utilize to track an individual.

[7] The RAD finally rejected the Applicant's assertion that he is at risk because of his imputed Sikh separatism, as it found that, as noted, the police do not in reality believe him to be a Khalistan supporter and only targeted him at the AOH's behest. It equally found that Mr. Nijjar did not face a serious possibility of persecution on account of his Sikh identity, in Delhi.

[8] On the second prong, the RAD found that the Applicant had not raised any grounds as to why Delhi would be objectively unreasonable as an IFA.

III. ISSUES and STANDARD OF REVIEW

[9] The Applicant raises two principal issues on judicial review, as follows:

1. The RAD acted unfairly in failing to disclose an updated version of the National Documentation Package [NDP] to the Applicant, who was unrepresented at the time his appeal was considered.

2. The RAD unreasonably failed to consider the ability of the AOH to locate the Applicant in Delhi through his family.

[10] The standard of review applicable to the first issue is essentially correctness. Tribunals are not permitted to act unfairly, and there is no deference on allegations of unfairness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56.

[11] On the second issue, the applicable standard is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

IV. LEGAL FRAMEWORK

[12] The test for the determination of an IFA is well established. For a proposed IFA to be viable, two criteria must be met:

1) First, there must be no serious possibility of the claimant being persecuted, or subject to a personalized risk of torture, risk to life, or risk of cruel and unusual punishment in the part of the country where the IFA exists.

2) Second, it must not be unreasonable for the claimant to seek refuge in the IFA, considering all of their particular circumstances.

[13] A serious possibility of persecution, or a risk of torture, risk to life, or risk or cruel and unusual punishment can only be found if it is demonstrated that the agents of persecution have the means and motivation to search for an applicant in the suggested IFA: *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46, citing *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 43.

[14] It is a refugee claimant, and not a respondent or the RAD, who bears the onus of demonstrating that the IFA is unreasonable: *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21.

V. ANALYSIS

A. *No duty to disclose NDP, No Procedural Unfairness*

[15] The Applicant argues that because he was not represented when his appeal was determined, the RAD was under a heightened duty to ensure the fairness of its proceedings, and that it had a duty to disclose to him the most recent version of the Board's National Documentation Package [NDP] for India. While I certainly agree that, as a general proposition, the duty of fairness is somewhat elevated where litigants have no legal representation, I do not agree that this duty was breached in this case.

[16] The RAD specifically turned its mind to the question of whether it was obliged to disclose the new NDP, and it explicitly did so with the Applicant's lack of legal representation in mind. The RAD stated:

> Secondly, having reviewed the relevant pieces of the older and newer versions of the NDP for India that the RPO and the Appellant's former representative relied on, as well as the other pieces that I consider may be relevant to the claim, I see no change in the general country conditions that would require me to issue notice to the Appellant.

[17] In support of this determination, the RAD relied on the decision of this Court in *Lin v Canada (Citizenship and Immigration)*, 2021 FC 380, wherein my colleague Justice Ahmed stated (at para 26):

> The jurisprudence is clear that the RAD only has a duty to disclose an updated NDP if the information in the NDP arose "after an applicant has perfected their appeal and made their submissions and that information is different and shows a change in the general country conditions" (*Zhang* at para 54; see also *Marino Ospina v*

> *Canada (Citizenship and Immigration)*, 2019 FC 930 at para 24, citing *Chen v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 266 (CanLII), [2002] 4 FC 193, [2002] FCJ No 341 (FCTD) ("*Chen*") at para 33).

[18] The Applicant does not directly address the Court's reasoning in cases such as *Lin*, but argues that "considering that the applicant was without a counsel he should have been given notice of change in NDP even if it was not important." I disagree. The Applicant points to no particular changes in the new NDP that were relied upon by the RAD, which could have given rise to a duty to disclose the update. On the contrary, the Applicant appears to recognize that there were no important changes in the update. This being the case, the Applicant's reasoning is at odds with the jurisprudence and cannot succeed.

B. *The RAD's decision was reasonable*

(1) First Prong of the IFA Test

[19] The Applicant has raised various concerns that, he suggests, taints the RAD's conclusion that he could safely relocate to the IFA. With respect, I have not found that these arguments establish any unreasonableness in the RAD's findings.

[20] At the hearing in this matter, counsel for the Applicant focused his argument on the RAD's perceived failure to consider whether the AOH in this case could find the Applicant through pressuring his family members.

[21] As the Respondent points out, however, in the Applicant's testimony before the RPD, he did not appear to allege that he feared being found in Delhi through any pressure that the AOH may be able to apply to his family. The RPD stated (at para 29):

> I asked the Claimant how he thought his persecutors would locate him in Delhi. He testified that it was only through the police he would be located, and specifically, that if he applied for a job or housing, he would have to give him previous address and background, which would then cause the police to contact his home village to conduct a criminal background check.

[22] Later in its reasons, the RPD added:

> While not argued before me, I have also considered whether the Claimant would be able to maintain contact with his family members, who are still being visited, sometimes violently, by the police from the Nearby Villages on behalf of the Persecutor. However, no evidence was submitted as to how the Persecutor could locate the Claimant if he communicates with his friends and family, informs his friends and other family that he is in India but not his precise location, and meets with them outside the area of influence of his Persecutor.

[23] Notably, these findings were not directly challenged at the RAD. Nor did the Applicant raise any new issues or evidence related to the feared targeting of his family. While I acknowledge the Applicant's evidence that, after his departure from India, his father was arrested, detained and tortured, the Applicant simply did not refer to this as one of the reasons why he feared that he could be found in Delhi. This being the case, I find that the RAD did not err in failing to specifically address the possibility that the Applicant could be located in Delhi, through the application of pressure on his family. Beyond this, the thrust of the RAD's finding was that the influence of the agent of harm was local in nature. This being the case, it was

incumbent on the Applicant to demonstrate how the AOH would be able to harm the Applicant in the IFA location, even if he were to be able to locate him through family members.

[24] The Applicant has provided various other arguments in support of this application. With respect, however, these arguments fall into one of two categories, neither of which can prevail on judicial review. The first category consists of arguments that the Applicant would not be safe in the IFA location. However, these arguments were either not put to the RAD, or were before the RAD and are merely repeated here. They are, in other words, first instance submissions on the merits of the Applicant's claim, rather than arguments in support of an application for judicial review. To the extent that these arguments are being raised for the first time on judicial review, they expose no error in the RAD's reasoning, as the RAD was under no obligation to consider arguments that were not before it. One example of this kind of argument is the Applicant's contention that "the concept of IFA is antiquated as Google and other websites are specialized in finding and locating people, and it is no longer just the rich and powerful that are able to find people in hiding." Novel as this argument may be, it does not appear to have been put to the RAD, and so I decline to consider it here.

[25] The second set of arguments urge me to reweigh the evidence that was considered by the RAD. Once again, this is not the function of the courts on judicial review. One example of this kind of argument is the Applicant's contention that Delhi is too close to the Applicant's home region to be safe. The RAD considered the situation in Delhi, in relation to the Applicant's profile and concluded, based on its review of the evidence, that it was a viable IFA location. The Applicant's arguments that the RAD erred in this conclusion are, at root, based on disagreement

with the RAD's weighing of the evidence. Such arguments cannot prevail on judicial review: *Vavilov* at para 125.

[26] As a result of the above, I have concluded that the first prong of the RAD's IFA analysis was reasonable.

(2) Second Prong of the IFA Test

[27] The RAD's assessment of the second prong of the IFA test was brief, as it noted that the Applicant had not submitted any arguments to establish that the RPD had erred. I have reviewed the submissions that the Applicant's previous counsel provided in support of his RAD appeal. As the RAD found, there were no submissions provided on the second prong of the test.

[28] This being the case, I find that the Applicant's judicial review submissions on the RAD's prong two analysis to be unpersuasive. The Applicant now argues that it would be unreasonable for him to relocate to Delhi, but, as above, he does so as if this were a first level decision on the merits. He highlights no particular error in the RAD's reasons, and, on my own review of the Record, I see nothing unreasonable in the tribunal's conclusions.

VI. CONCLUSION

[29] For the above reasons, I have concluded that the RAD's decision was reasonable, and that this application for judicial review must therefore be dismissed. Neither party proposed a question for certification, and I agree that none arises.

JUDGMENT in IMM-6661-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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