

Federal Court



Cour fédérale

Date: 20250603

Docket: IMM-5402-24

Citation: 2025 FC 993

Ottawa, Ontario, June 3, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

SARVJIT SINGH, et al.

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated March 6, 2024 [Decision]. The RAD upheld the decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of

the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because he as an Internal Flight Alternative [IFA] in Delhi.

[2] This is the second RAD appeal. The first RAD appeal was allowed, and the matter was returned to the RPD for re-determination. Although credibility was the determinative issue at their first RPD hearing, at their second RPD hearing, the determinative issue was IFA.

[3] For the reasons that follow, this application for judicial review is dismissed.

II. Background Facts

[4] Sarvjit Singh [Principal Applicant or PA], his wife, Rajwinder Kaur [Associate Applicant or AA] and their minor son, Karanvir Singh [MA] [together the “Applicants”], are citizens of India. Their Basis of Claim form alleges as follows.

[5] The Applicants claim to fear the Punjab police who they say have falsely accused the Principal Applicant of working with a friend, Jagjit Johal [JJ]. JJ is an old friend who began visiting the Principal Applicant at his store after he returned from the United Kingdom in 2016. JJ was vocal about his pro-Khalistan views and was temporarily detained by the police with instructions to report to them when summoned. However, JJ absconded.

[6] On June 7, 2017, JJ suddenly re-appeared at the PA’s store. When the police approached him, JJ escaped. As a result, the police arrested the PA, alleging he was linked with JJ. The PA was tortured and released on June 9th upon payment of a bribe.

[7] Following the release, the PA's father received threatening phone calls. At the end of June, police threatened to kill the PA if JJ was not located. Accordingly, the PA left his village and relocated to his sister's home in Uttar Pradesh. He obtained the services of an agent who helped the Applicants obtain visas for Canada. They travelled to Canada on November 26, 2017.

[8] In January 2018, the AA and MA returned to India. They travelled back to Canada in May 2018, but in August 2018, returned to India. They arrived in Canada for a third time and final time in July 2019. The Applicants claimed refugee protection in November 2019.

[9] The first hearing before the RPD took place in April 2021. When it became apparent, the PA was having difficulty understanding and testifying, the hearing was adjourned in order to give the Applicants an opportunity to undergo psychological testing. The PA obtained a psychological in May 2021.

[10] The Applicants' refugee hearing resumed on June 7, 2022. The RPD subsequently rejected the claims based on credibility. Although credibility was the determinative issue at their first RPD hearing, at their second RPD hearing the determinative issue was IFA.

[11] The Applicant contests the RAD's decision dated March 6, 2024.

III. The RAD Decision

[12] The RAD held the RPD was correct in finding the Applicant has a viable IFA in Delhi. The RAD agreed with the RAD that the determinative issue was the IFAs.

A. *New Evidence*

[13] The Applicants submitted as new evidence an Affidavit by a Punjabi/English translator, a review of the audio recording of the hearing before the RPD. The translator maintained that the correct translation is “Khalistan” as opposed to “Sikh” person or “staunch Sikh” person as used by the interpreter during the hearing. The RAD found that the evidence, except for the second part of its paragraph 2 met the criteria for admission on appeal.

B. *Psychiatric Reports and Chairperson’s Guideline 8*

[14] The RAD expressed being mindful of the medical evidence showing that the PA is suffering from mental health issues such as depression, Post-Traumatic Stress Disorder, and anxiety and that the AA is suffering from similar ailments. The RAD also examined the Chairperson’s Guideline 8 and determined that while accommodation may be required to ensure that vulnerable witnesses can testify in a hearing, medical evidence does not negate the requirement that a claimant must prove their case.

C. *Procedural fairness*

[15] The Applicants argued that the RPD breached their procedural fairness rights as follows:
i) they were not given a fair opportunity to present their case because the member was rude and insensitive to the needs of the Applicants; ii) there were errors in the interpretation; and iii) the RPD was biased.

[16] The RAD stated that it conducted an independent review of the evidence including the written transcript and audio-recordings and found that the RPD did not breach the Applicant's right to natural justice and procedural fairness. The RAD found that the Applicants were given a fair opportunity to present their case. The errors in interpretation were not material to the case. Finally, the RAD concluded that the RPD was not biased, citing that the threshold is very high to establish bias.

D. IFA

- (1) Punjabi police do not have the means or motivation to locate the Applicants in Delhi

[17] The RAD applied the two-pronged test for an IFA set out in *Rasaratnam v Canada (Minister of Employment and Immigration)* (CA), 1991 CanLII 13517 (FCA).

[18] On the first prong of the IFA test, the RAD concluded that there is no serious possibility of the Applicants being persecuted or, on a balance of probabilities, being personally subjected to a risk to life, cruel and unusual treatment or punishment, or torture in the part of the country in Delhi at the hands of the Punjabi Police as they don't have the means or motivation to locate the Applicants in Delhi.

[19] The RAD found no evidence that the PA's information would be entered into India's Crime and Criminal Tracking Network Systems police database, thus the RAD found that the Applicants could not be located through this database. Further, there was no evidence that a summons, an arrest warrant, or any other originating documents were produced regarding those,

or any other allegations. For the RAD, this indicates that the police do not seriously consider the PA a person of interest in relation to a crime. The RAD also found that there was not sufficient evidence that the Applicants would be located through the tenant verification process.

[20] The RAD also determined that the Punjab police does not have the motivation to locate the Applicants in Delhi. The RAD considered that there was no evidence that a warrant was issued for the PA's arrest, thus, he was able to leave the country with his own passport. This coupled with the finding that the Punjab police were acting extrajudicially when they detained him led to conclude that the police did not have the motivation to pursue the Applicants in Delhi since they do not consider him to be a serious criminal (*Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557 (CanLII), at paras 52-53; *Momi v Canada (Citizenship and Immigration)*, 2023 FC 1714 (CanLII), at paras 43-45 [*Momi*]; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1211 (CanLII), at para 34).

[21] The RAD agreed with the RPD that affidavits from 2021 from PA's father and of the ex-sarpanch of their village do not prove the motivation of the police to locate the Applicants in Delhi in 2025. Overall, the RAD concluded that the Applicant did not prove on a balance of probabilities that the police are motivated to locate them in Delhi if they were to move there in 2025.

[22] The RAD found that the Applicants did not prove that JJ or Khalistan militants have the means nor the motivation to locate them in Delhi. It found that the Applicants are speculating when they say that JJ will come to know that they are living there, since they have no other information that JJ can or will look for them anywhere. For the RAD speculation is not sufficient

proof, on a balance of probabilities, that JJ or his associates would be able to locate the Applicants if they are to move to Delhi. The RAD found that neither JJ nor Khalistan militants have on the balance of probabilities the means nor motivation to locate the Applicants in Delhi.

(2) It is reasonable for the Applicants to relocate to Delhi

[23] On the second prong of the test, the RAD found that Delhi is a reasonable IFA. Here, the RAD noted that the Applicants must show actual concrete evidence of situations jeopardizing their life or safety. The RAD noted the documentary evidence indicates that Delhi has a sizable Sikh community, and Punjabi is a prevalent language, that Sikhs are free to practise their religion, and that they generally do not face systematic problems in India based on their identity.

[24] Further, the RAD noted that the Associate Applicant holds a Bachelor of Arts Degree which will help her secure employment in Delhi. The RAD also found that the Applicants have not established that they would be unable to access or afford ongoing treatment for their mental health issues in Delhi.

IV. Issues and Standard of Review

[25] After considering the submissions of the parties, the issues to be determined are:

1. Were the RAD's procedural fairness findings reasonable?
2. Were the RAD's conclusions on the Punjab police's motivation and means to pursue the PA reasonable?

[26] The Applicants and Respondent agree that the RAD's findings and decisions are reviewable on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[27] The RAD's findings in relation to the alleged breaches of procedural fairness by the RPD are reviewable on a reasonableness standard (*Patel v Canada (MCI)*, 2024 FC 912 at para 13; *Lokhande v Canada (MCI)*, 2023 FC 1362 at para 7; *Ayub v Canada (MCI)*, 2024 FC 1382 at para 14; *Imafidon v Canada (MCI)*, 2023 FC 1592 at paras 24-25; *Rodas Tejeda v Canada (MCI)*, 2025 FC 215 at para 47-51; *Rodriguez v Canada (Citizenship and Immigration)*, 2022 FC 774 at paras 14-20; *Vavilov*, at paras 23 and 25). I have therefore adopted the reasonableness standard of review in considering both issues.

[28] Reasonableness is a deferential standard of review which does not allow a reviewing court to reweigh evidence, interfere with a decision maker's factual findings or substitute the conclusion that the court would have reached in the shoes of the decision maker (*Vavilov* at paras 15, 125). A reasonableness review is a robust form of review that requires the Court to consider both the administrator's decision-making process and the outcome of the decision (*Vavilov* at paras 83, 87; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 58 [*Mason*]).

[29] A reviewing court must consider the reasonableness of the decision as a whole, considering both its outcome and the decision maker's underlying rationale (*Vavilov* at paras 15, 83). A reasonable decision is based on a rational and logical chain of analysis and is justified,

transparent and intelligible in light of the factual and legal constraints bearing upon it (*Vavilov* at paras 99, 102, 105). The onus is on the Applicant to demonstrate the unreasonableness of the decision (*Vavilov* at para 100). A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). If the reasons of the decision-maker allow a reviewing court to understand why the decision was made and determine whether the decision falls within a range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86).

V. Submissions

A. *Applicants' submissions*

(1) Procedural Fairness

[30] The Applicants submit that the RAD's determination that they were given a fair opportunity to present their case before the RPD was unreasonable.

[31] The Applicants argue there were issues understanding and answering questions during the hearing. They believe it was procedurally unfair and contrary to the psychological report which recommended that the AA be allowed to answer questions for the PA. The Applicants argue that the PA was questioned in contravention with the psychologist's recommendations. They also believe the RPD failed to afford them necessary empathy and patience. In support of their assertions of the breach of procedural fairness, the Applicants rely on the following case law: *Ozturk v Canada (Citizenship and Immigration)*, 2003 FC 1219 (CanLII) at paragraph 13; *Warsame v Canada (Citizenship and Immigration)*, 2019 FC 118 (CanLII) at paragraph 32.

(2) Reasonableness

[32] According to the Applicants' submissions, the RAD's conclusions on the Punjab Police's motivation to pursue and its means to locate the PA in the proposed IFA are unreasonable for several reasons.

[33] With respect to there being a lack of evidence of the police's ongoing interest in the Applicants since 2021, they argue that the RAD ignored their evidence. They argue that PA's father, who had previously written an affidavit in 2021 attesting to the police's continued inquiries after the PA, passed away on May 15, 2023, and consequently could not provide an updated affidavit. The Applicants submit that the RAD gave no consideration to PA's testimony in the August 2023 hearing before the RPD stating that he gets information from family members, a shopkeeper and the Sarpanch. For the Applicants, the RAD ignored evidence that ran contrary to their central conclusion on police motivation, which is a reviewable error.

[34] The Applicants also argue that RAD's assessment of the police's motivation to pursue the PA to the proposed IFA did not include a consideration of how the PA's profile in the eyes of the police had changed since he left for Canada. While previously the police had only been interested in the PA because of his ability to aid their search for JJ, after he fled to Canada, the evidence shows that the police's accusations against the PA evolved to include allegations that he is living together with JJ and "had become antinational." For the Applicants, the fact that there is no evidence that the Punjab police have searched for the PA outside of his home village

is not evidence that they would be unmotivated to do so should he return to the country, since perceived militants and supporters of Khalistan are high profile in India.

[35] Another argument presented by the Applicants is that the RAD's conclusion on the Punjab police's means to locate the PA in the proposed IFA was unreasonable because the PA gave his biometrics to the Punjab police, and it is more likely than not that some sort of record on him exists. As such, he could be tracked should he return to India. Further, the Applicants submit that there is evidence that the Punjab police were also making inquiries about the PA to his family and fellow villagers. Finally, given the PA's heightened profile as a perceived antinational that authorities in India take militancy and other threats to national security seriously, and that they have extensive powers to deal with individuals who are suspected of being involved with separatist movements, it would be reasonable to conclude that the Punjab police would have the resources to pursue the PA to the proposed IFA, should he return to India.

B. *Respondent's submissions*

(1) Procedural Fairness

[36] The Respondent submits that the Applicants had a fair opportunity to present their case. Regarding the allegation that the RPD was rude and insensitive, the RAD acknowledged that the hearing was at times challenging and charged but did not deprive the Applicants of an opportunity to present their case. The Respondent gave the following examples from the transcript where the RPD Member acknowledged the psychological report and was kind towards the Applicants as referenced by the Respondent:

MEMBER: Okay. So, Madame KAUR, at --- at this moment, it's your husband who's the Designated Representative of your son; however, after reading the psychological report, the psychologist suggested that you would be in a better position to testify about what happened. So, when --- when it comes to the questioning part, I'm going to start by questioning you. So, in light of the psychological report, I just had a discussion with your Counsel and we both agree that it would be better if you were the Designated Representative to your son because you're again, you're the one who is in a better position to testify and a Designated Representative, what their main responsibility is --- is to put forth that the interests of the Claimant in --- in --- in this sense, your son. So, would you be willing to be Designated Representative of your son? Did she say anything? Does she understand the question?

MEMBER: And if you require a break at any time during the hearing, say so and we can break for a few minutes.

[37] The Respondent submits that the RAD's findings are consistent with the record, which shows that the RPD Member made several procedural accommodations based on the psychological report and counsel's own suggestions. The Respondent also points out that the Applicants selected certain extracts of the transcript to bolster their argument while failing to produce the context of the extracts.

(2) The Applicants have a viable IFA in India

[38] The Respondent submits that the Applicants did not displace the onus under the first prong of the IFA test. The Respondent cites *Momi v Canada (Citizenship and Immigration)*, 2023 FC 1714 to support that the RAD reasonably considered that the Applicants left India on their own passports despite the police's broad powers to stop them from doing so due to the seriousness with which they treat militancy support, and that there is no evidence they are

wanted by police. Importantly, the Applicants did not adduce any recent evidence that the Punjab police continued to pursue them.

[39] The Respondent considers the argument that the RAD failed to consider that PA's risk profile puts him at heightened risk lacks merit. The Respondent notes that the PA did not make any arguments before the RAD that the Punjab police's accusation that he now lives with JJ heightens his risk profile. For the Respondent, this does not displace the finding that the Applicants did not adduce any objective evidence, such as a summons or warrant that would indicate the PA is considered to be anti-national and thus at heightened risk. As the RAD noted at paragraphs 38-39, the Applicant's interactions with police do not indicate a genuine belief he is perceived as an anti-nationalist. Having failed to establish the Punjab police genuinely suspect the Applicant's involvement in anti-national activities, it was reasonable for the RAD to find insufficient evidence they remain motivated to pursue him in the IFA.

VI. Analysis

A. *Procedural Fairness*

[40] I find the RAD did consider the Applicants' procedural fairness arguments and reasonably concluded they had a fair opportunity to present their case. I respectfully agree with the Respondent that the Applicants' allegations that the RPD member was rude and insensitive were examined by the RAD. The RAD recognized in its reasons that the hearing was at times challenging and charged but did not deprive the Applicants of the opportunity to present their case.

[41] Upon an attentive reading of the transcripts of the hearing before the RPD, the Member carefully considered the psychological reports and adapted the questioning based on suggestions from the Applicants' counsel.

[42] Also, as pointed out by the Respondent, the RAD took in consideration and listed several procedural accommodations that were taken by the RPD including allowing the AA to commence giving evidence, providing water breaks, agreeing to a break when counsel suggested one; agreeing to counsel's suggestion that the PA start to give evidence after the break; asking PA if it would be okay for the RPD to ask him some questions, which he confirmed was okay.

[43] The RAD's analysis also took in consideration the fact that the RPD member asked the Applicants to speak up on several occasions since they often spoke so quietly, the audio was not picking up the sound, and that the RPD kept the psychological assessment in mind throughout the hearing while attempting to meet its obligations to assess the refugee claim.

[44] Considering the above, I find that it was reasonable for the RAD to conclude the Applicants had a fair opportunity to present their case.

B. *Reasonableness of the IFA decision*

[45] On the first prong of the IFA analysis, a claimant bears the onus of demonstrating that the proposed IFA is unreasonable because they fear a serious possibility of persecution throughout their entire country, including, of course, in the proposed IFAs. In order to discharge their burden, the claimant must demonstrate that they will remain at risk in the proposed IFA from the

same individual or agents of persecution that originally put them at risk. This assessment is a prospective analysis and is considered from the perspective of the agents of persecution, not from the perspective of the claimant (see *Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 29, citing *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21 and *Aragon Caicedo v Canada (Citizenship and Immigration)*, 2023 FC 485 at para 12).

[46] The Applicants were required to show that the agents of persecution would be motivated to find them in the IFA. As pointed out by the Respondent, the evidence on record is that the PA's family, neighbour, and Sarpanch interactions with the Punjab police have been local. The affidavit from the PA's father indicates the risks are in Punjab, India, but is silent on the potential risks outside of Punjab.

[47] There is no evidence that Punjab police have followed through on the threat to make false charges against the PA, or entered his information into a national database, nor did the Applicants adduce any objective evidence, such as a summons, or warrants indicating that he is considered to be anti-national and thus at a heightened risk. I agree with the Respondent that his interactions with police do not indicate a genuine belief he is perceived as an anti-nationalist, nor that he is involved in anti-national activities.

[48] The jurisprudence of this Court has found that extrajudicial arrests and the lack of any charges can reasonably lead to the inference that the police lack the motivation to pursue an applicant in the IFA location and that the lack of official documentation such as an arrest warrant or summons reasonably can lead to the conclusion that the Punjab police do not genuinely

suspect someone of a serious crime (*Athwal v Canada (MCI)*, 2024 FC 672 at para 32; *Momi* at para 43 and *Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557 at para 52).

[49] Furthermore, in this case, the Applicants were able to leave India on their own passports despite the police's broad powers to stop them from doing so due to the seriousness with which they treat militancy support, and that there is no evidence they are wanted by police. (*Momi* at paras 37- 42.)

[50] Overall, I find that the RAD completed a thorough analysis that took into consideration the evidence on file, the Applicants' testimonies and the documentary evidence. There is no error in its analysis.

VII. Conclusion

[51] I find that the Applicants have not met their burden to establish that the RAD Decision is unreasonable, nor that any breach of procedural fairness occurred.

[52] The application for judicial review is dismissed.

JUDGMENT in IMM-5402-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There are no questions to be certified.

"L. Saint-Fleur"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5402-24

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