Federal Court  Cour fédérale

Date: 20250618

Docket: IMM-16036-23

Citation: 2025 FC 1095

Ottawa, Ontario, June 18, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

PARAMJIT KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Paramjit Kaur [Applicant], is a citizen of India who alleges a fear of persecution in her country of origin. She seeks judicial review of a decision dated November 21, 2023, where the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD] rejected her refugee claim [Decision] on the grounds that she is not a refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and*

Refugee Protection Act, SC 2001, c 27 [IRPA]. The RAD confirmed the Refugee Protection Division [RPD] decision and found that the Applicant has a viable internal flight alternative [IFA].

[2] For the reasons set out below, the application for judicial review is dismissed. The Decision is not unreasonable.

II. Background and Decision Under Review

[3] In the proceedings before the RPD and RAD, the Applicant's claim was submitted and considered along with her husband's. However, in this application for judicial review, she is the sole applicant. In this case, the Court, just like the RAD, recognizes that the Applicant and her husband's claim are intertwined. Both applications for judicial review were heard on the same day.

[4] The Applicant claims that she was targeted by the authorities because of her and her husband's support to the Khalistan movement. She alleges that she engaged in pro-Khalistan activities while in India. She personally campaigned and supported the Shiromani Akali Dal Mann party, a party whose main objective is the independence of Khalistan. The Applicant's husband ran his own transportation company. In February 2019, one of his employees drove a truck to Jammu and Kashmir and never returned. Shortly after, the police arrested the Applicant and her husband, claiming that guns were found in the intercepted truck. They were detained, assaulted and tortured and she was sexually assaulted. After being mistreated and accused of militancy, the Applicant was released upon payment of bribes.

[5] On August 25, 2019, the Applicant arrived in Canada with her husband where they claimed refugee status. The Applicant alleged that she continues to support Khalistan from Canada. She also states that the police in India have issued notices against them and are still enquiring about their whereabouts.

[6] On May 1, 2023, the RPD excluded the Applicant's husband from protection pursuant to section 1F(a) of the *United Nations Convention Relating to the Status of Refugees* [Convention] and section 98 of the IRPA on the basis that he was a member of the Indian Army in the 15-Punjab Regiment who committed crimes against humanity. In the same decision, the RPD also found that the Applicant has an IFA in India.

[7] On November 21, 2023, the RAD confirmed the RPD's Decision that the Applicant had a viable IFA. The RAD concluded that there was insufficient credible evidence to substantiate, on the balance of probabilities, that the Applicant is a genuine supporter of Khalistan who would want to continue to advocate for Khalistan if she were to return to India. Therefore, she does not face a serious possibility of persecution on the basis of political opinion. There is also insufficient evidence to sustain the allegation that she could be perceived as a supporter when she returns. In addition, the RAD found that the Applicant did not establish with sufficient credible evidence that the Indian authorities have the motivation to pursue and target her to an IFA. This Decision is the subject of this judicial review.

III. Issues and Standard of Review

[8] The issue on judicial review is whether the RAD's Decision was unreasonable.

[9] The parties submit that the standard of review with respect to the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]). I agree that reasonableness is the applicable standard of review.

[10] On judicial review, the Court must consider whether a decision bears the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[11] A claimant has an IFA when (1) they will not be subject to a serious possibility of persecution nor to a risk of harm under sections 96 and 97 of the IRPA in the proposed IFA location and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances. Both prongs need to be satisfied to conclude that a claimant has an IFA (*Bassi v Canada (Citizenship and Immigration)*, 2024 FC 910 at paras 15-16 [*Bassi*] citing *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at pp 597-598) [*Thirunavukkarasu*]).

[12] With respect to the first prong of the IFA test, an applicant must demonstrate that the proposed IFA is unreasonable because they fear a possibility of persecution throughout their entire country. An applicant must establish that the agents of persecution have both the means and the motivation to cause harm on a prospective basis (*Bassi* at para 17, other citations omitted).

[13] The threshold on the second prong of the IFA test is a high one. There must be "actual and concrete evidence" of conditions that would jeopardize an applicant's life and safety in travelling or temporarily relocating to a safe area. Once the potential for an IFA is raised, the applicant bears the onus of establishing that it is not viable (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 9 [*Olusola*], citing *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 at para 15 and *Thirunavukkarasu* at pp 594-595). If a claimant has a viable IFA, this will negate a claim for refugee protection under either section 96 or 97 (*Olusola* at para 7).

[14] The Applicant did not challenge the RAD's conclusions on the second prong of the IFA test.

[15] The Applicant states that the RAD erred by failing to consider the notices to appear that have been issued against the Applicant and her husband. The RAD also failed to consider the fact that they are at risk of being located through the tenant verification system because they are both registered in the Crime and Criminal Tracking Network and Systems [CCTNS] database.

Considering those facts, it was unreasonable for the RAD to conclude that the India authorities would not have the resources to locate the Applicant.

[16] Further, The Applicant argues that the RAD erred by negating her credibility based on her husband's testimony, which does not concern her decision or actions. It was not reasonable for the RAD to conclude that the Applicant was not a genuine Khalistan supporter because of the inconsistencies in her husband's statements. Additionally, the Applicant submits that the RAD erred in its analysis of the evidence relating to the means and motivation of the agent of persecution. The RAD focused on elements that did not take place rather than assessing what had in fact taken place.

[17] This Court is well acquainted with the CCTNS and its effects on the lives of those who fear persecution in India. In this case, as in many others, the Court refers to the evidence that the CCTNS does not contain information on extrajudicial arrests, that there is little interstate police communications (with the exception of major crimes), and that the police is prohibited by law to use biometric data from the tenant verification system for criminal investigations (*Singh v Canada (Citizenship and Immigration)*, 2025 FC 459 at para 17 citing *Chatrath v Canada (Citizenship and Immigration)*, 2024 FC 958 at para 32; *Bassi* at paras 23-24; *Sandhu v Canada (Citizenship and Immigration)*, 2024 FC 262 at paras 17, 21-22; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1758 at paras 30-31).

[18] Contrary to the Applicant's assertions, the RAD did properly consider the circumstances of the Applicant's detention and release as well as her actions and activities in India and Canada.

Based on the types of activities that the Applicant has undertaken in Canada since her arrival, it was open to the RAD to find that these were very limited and do not rise to the level of militancy that would have attracted the attention of the authorities. The record is clear that the Applicant was never provided with a First Information Report [FIR] after her detention and release in India. Further, FIR are in the public domain and the Applicant did not provide one in support of her claim. The Applicant also stayed in her neighbourhood undisturbed for several months, among other things. In sum, the RAD assessed the evidence and arguments that were presented.

[19] Reading the Decision holistically, I cannot find it was unreasonable for the RAD to confirm that the authorities would not have such interest in the Applicant nor that they would be motivated to pursue her to an IFA. This conclusion was borne out of the evidence before the RAD and was referred to in the Decision. As such, the RAD's conclusions on the lack of motivation of the agents of persecution is transparent, intelligible and justified.

[20] With respect, the Applicant is essentially asking the Court to reweigh the evidence in order to arrive at a different conclusion regarding the Indian authorities' capacity and motivation to locate her in a proposed IFA. This is something the Court will not do on judicial review absent exceptional circumstances, which do not arise here (*Vavilov* at para 125).

[21] As the Respondent correctly identified, if the Applicant has not established that the authorities would have the motivation to pursue her to an IFA, this element is determinative in assessing the first prong of the IFA test (*Arora v Canada (Citizenship and Immigration)*, 2024 FC 852 at para 18).

[22] Furthermore, the determinative issue for the RAD was credibility. Credibility determinations are part of the fact-finding process and are afforded significant deference upon review. Such determinations by the RPD and the RAD demand a high level of judicial deference and should only be overturned "in the clearest of cases". Credibility determinations have been described as lying within "the heartland of the discretion of triers of fact […] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence" (*Behleem v Canada (Citizenship and Immigration),* 2023 FC 917 at paras 19-20).

[23] In the Applicant's case, the RAD's Decision meets the hallmarks of reasonableness, being coherent and rational in its analysis of the evidence and arguments provided. The Decision was responsive to the Applicant's submissions and is thus not unreasonable.

V. Conclusion

[24] The application for judicial review is dismissed. The parties do not propose any question for certification, and I agree that in these circumstances, none arise.

JUDGMENT in IMM-16036-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Nilufar Sadeghi	FOR THE APPLICANT
Zoe Richard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nilufar Sadeghi Barristers and Solicitors Montréal (Québec)	FOR THE APPLICANT
Attorney General of Canada Montréal (Québec)	FOR THE RESPONDENT