

Federal Court



Cour fédérale

Date: 20250618

Docket: IMM-16032-23

Citation: 2025 FC 1096

Ottawa, Ontario, June 18, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

NIRMAL SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Nirmal Singh [Applicant], is a citizen of India who alleges a fear of persecution in his country of origin. He 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 his refugee claim [Decision] on the grounds that he is excluded from refugee protection under article 1F(a) of the *United Nations Convention Relating to the Status of*

Refugees [Convention]. The RAD found that there are serious reasons to consider he committed crimes against humanity during his service in the India Army. The Applicant alleges that the decision is unreasonable because the RAD erred in its credibility assessment and in its analysis of the objective evidence as it relates to the relevant facts. The Applicant seeks judicial review of the RAD's Decision.

[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] The Applicant led a 15-year career in the Indian army. In 1999, after he retired from the army, the Applicant ran his own transportation company. In February 2019, one of his employees drove a truck to Jammu and Kashmir and never returned. Shortly after, police arrested the Applicant and his wife, claiming that the truck had been intercepted and that guns were found in the truck. They were detained, assaulted and tortured. After being mistreated and accused of militancy, the Applicant was released upon payment of bribes.

[4] On August 25, 2019, the Applicant arrived in Canada with his wife where they claimed refugee status. The Applicant's claim is based on the grounds of political opinion as he alleges that he was targeted by the authorities for his implication in the events of February 2019 and his support to the Khalistan movement. The Applicant submits that he supports Khalistan from Canada. He also alleges that the police in India have issued notices against him and his wife and are still enquiring about their whereabouts.

[5] On May 1, 2023, the Refugee Protection Division [RPD] found that the Indian Army, including the 15-Punjab Regiment [Regiment] with whom the Applicant served, committed crimes against humanity in Jammu and Kashmir during the years the Applicant was a soldier and, in the regions where his Regiment was stationed. The RPD determined that the Applicant was thus excluded from protection pursuant to section 1F(a) of the Convention and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The RPD also found that the Applicant has a viable internal flight alternative [IFA] in India.

[6] The Applicant appealed the RPD decision before the RAD. The Applicant did not contest that the Indian Army committed the abuses identified and that those actions met the definition of crimes against humanity. Rather, the Applicant contested that the RPD erroneously assessed his duties and activities in the army as well as his knowledge and contribution to the crimes of the Indian Army.

[7] On November 21, 2023, the RAD confirmed the RPD's Decision. The RAD found that the Applicant was an infantry soldier who participated in counter-insurgency operations in Jammu and Kashmir during the 1980's and 1990's. The objective evidence showed that the Indian Army committed serious abuses of suspects and civilians throughout that period. The RAD found that the Applicant had knowledge of the Indian Army's crimes against humanity through its operations in Jammu and Kashmir and that there were no extenuating circumstances that obliged the Applicant to stay in the Indian Army. Therefore, the RAD found that there are serious reasons to consider that the Applicant voluntarily made a significant and knowing contribution to the Indian Army's crimes against humanity in Jammu and Kashmir and that his

complicity extended beyond mere association or passive acquiescence. The RAD's decision as it relates to the Applicant's exclusion under the Convention is the subject of this application for judicial review.

[8] The Applicant's wife separately sought judicial review of the RAD's decision finding that she has a viable IFA in India. Both applications for judicial review were heard on the same day.

III. Issues and Standard of Review

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

[10] 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.

[11] 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).

[12] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant the Court's intervention. A reviewing court must refrain

from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). A decision may be unreasonable if the decision-maker misapprehended the evidence before it (*Vavilov* at paras 125-126).

[13] The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[14] The Applicant states that the objective evidence cited by the RAD does not contradict his testimony to the extent that it would reasonably cause the RAD to negate his credibility. More precisely, the Applicant testified that although he joined the army as an infantry soldier, he was given posts as a storekeeper and a bus driver. Therefore, he never participated in attacks, surveillance and other activities normally done by infantry soldiers. He argues that the RAD should have given more weight to his testimony. The Applicant also states that the RAD misapprehended the evidence set out in his Indian Army military discharge booklet, the medals that he received, and the objective documentary evidence.

[15] Given these erroneous factual findings, the Applicant submits that these mistakes tainted the RAD's application of the complicity factors stated in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*]. As such, it was unreasonable for the RAD to find serious reasons to consider that he had contributed to crimes against humanity committed by the Indian Army.

[16] On the other hand, the Respondent submits that the Applicant's arguments amount to a disagreement with the RAD's assessment of the evidence. The Respondent further argues that the RAD did not err in its application of the test set out in *Ezokola* and that the RAD's findings were grounded in both the legal and factual framework that bind it.

[17] The complicity factors applied with respect to the Indian Army and the Applicant, described in *Ezokola* include the size and nature of the organization, the part of the organization with which the applicant was most directly concerned, the applicant's duties and activities within the organization, the applicant's position or rank in the organization, the length of time the applicant was in the organization (particularly after acquiring knowledge of the group's crime or criminal purpose), the method by which the applicant was recruited and the applicant's opportunity to leave the organization (*Ezokola* at para 91).

[18] Despite counsel's able arguments, I cannot find that the RAD erred.

[19] The Applicant challenges the RAD's assessment under *Ezokola*, but the crux of his objections related to the RAD's findings on his role, duties and activities within the Regiment. The Applicant asserts that he did not engage in the operations attributed to the Indian Army and the Regiment given his peaceful roles within the Regiment. The Applicant relied on his testimony and a photo to support his argument that there was no contradiction in his allegation that he solely was a shopkeeper and a bus driver.

[20] However, I cannot agree that the RAD misapprehended his evidence and testimony. The evidence before the RAD did not support the Applicant's contention that he served in the Indian Army for fifteen years without having seen any combat. The RAD explained its findings that the Applicant was an infantry soldier, and what the role and tasks of an infantry soldier would entail, including being involved in combat for periods of time. The RAD also included an analysis of the activities of the Regiment at the relevant times and the objective evidence where it was posted.

[21] Indeed, the RAD accepted that the Applicant would have been a bus driver with the Indian Army at some point. The RAD assessed the photo of the Applicant in front of a bus and his testimony regarding his daily routine as a bus driver. The RAD found that this evidence could not overcome the other evidence before it. This evidence does not explain how the Applicant could have been in the Indian Army for fifteen years and never saw combat.

[22] The RAD's decision identified inconsistencies between the Applicant's testimony that he was always stationed in peace areas and the objective evidence stating that combat units like the Regiment alternate between combat fields and peace stations. It was also open to the RAD to find that the Applicant's assertion was contradicted by the objective documentary evidence that stated only a small portion of the army gets a chance to stay in a peacetime cantonment.

[23] Furthermore, the RAD considered the Applicant's military discharge booklet, listing that the Applicant was awarded the "Special Service Medal with Clasp Suraksha" [Medal]. The documentary evidence confirmed that this Medal was given to soldiers for their participation in

the counterinsurgency Operation Rakshak in Jammu and Kashmir. While I understand that the Applicant argues that the Medal was also given to civilians, he has not pointed to evidence that would have explained under what circumstances he would have received the Medal as a civilian. As such, I cannot find it was unreasonable for the RAD to find that he earned the Medal as a soldier while serving in the Indian Army, thus connecting him to Operation Rakshak.

[24] Deference is warranted in this case with respect to the RAD's credibility findings and weighing of evidence that was before it (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paras 15-16). To accept the Applicant's arguments means that I would have to reweigh the evidence that the RAD considered and grappled with, which the Court cannot do on judicial review. In the present case, the RAD's findings in relation to the Applicant's credibility and his involvement with the Indian Army and the Regiment were reasonably drawn.

[25] Having considered the materials filed by the parties and their legal arguments, I conclude that the RAD's decision is transparent, justified and intelligible.

V. Conclusion

[26] The application for judicial review is dismissed. The 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 not unreasonable.

[27] The parties do not propose any question for certification, and I agree that in these circumstances, none arise.

JUDGMENT in IMM-16032-23

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

DOCKET: IMM-16032-23

STYLE OF CAUSE: NIRMAL SINGH v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VIDEOCONFERENCE

DATE OF HEARING: MARCH 28, 2025

JUDGMENT AND REASONS: NGO J.

DATED: JUNE 18, 2025

APPEARANCES:

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Margarita Tzavelakos	FOR THE RESPONDENT

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