

CANADA / JUDGMENT

VB9-09091

COURT

Refugee Appeal Division

DECIDED

8 December 2020

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RAD File / Dossier de la SAR : VB9-09091 VB9-09092 / VB9-09093 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX XXXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Vancouver,
BC Appel instruit / entendu à Date of decision December 8, 2020 Date de la décision Panel
Michael J. Gardiner Tribunal Counsel for the persons who are the subject of the appeal Gurpreet
Billing Conseil des personnes en cause Designated representative XXXX XXXX Représentant(e)
désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION
OVERVIEW

- [1] I dismiss this appeal. XXXX XXXX (Principal Appellant), XXXX XXXX (Associate Appellant), and XXXX XXXX (Minor Associate Appellant) are citizens of India.
- a. The Appellants fear violence from XXXX XXXX XXXX XXXX (also known as XXXX XXXX), someone whom the Appellants allege is a criminal and who married into the Appellants' extended family without family permission.
- b. The Refugee Protection Division (RPD) found that the Appellants have an Internal Flight Alternative (IFA) in India in the city of Mumbai or in the city of Delhi. The Appellant's argue on appeal that they have previously attempted to flee their persecutor in India without success, and that he would have the means and motivation to harm them in the proposed IFA locations.
- c. The determinative issue for the Refugee Appeal Division (RAD) is whether the RPD erred in finding that the Appellants have an IFA in India.
- d. I find that the RPD did not err. I find that the Appellants have a viable IFA in India.
- DECISION

- [2] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither Convention1 refugees nor persons in need of protection.

BACKGROUND

- [3] The Principal Appellant says he became aware in 2012 that his cousin XXXX XXXX XXXX whom he says he considered a sister, was dating XXXX XXXX XXXX XXXX with the intention to marry him. The Principal Appellant and his family tried to forbid the marriage because it was a "love marriage" not arranged or sanctioned by the family. The Appellant testified that the family objected in part because XXXX XXXX was a "gangster" from a young age. The Principal Appellant also testified that the couple met at school where XXXX XXXX was president of the student council. The Principal Appellant did not elaborate further on XXXX XXXXs status as both a student leader and a gangster. The Principal Appellant explained to the RPD that the marriages for love alone were not acceptable in his family and culture. The Principal Appellant testified that he was vocal in his opposition to the marriage.
- [4] The Principal Appellant testified that XXXX XXXX and his associates disrupted a meeting with family and community leaders in the family village that had been called to dissuade his cousin from pursuing the marriage with XXXX XXXX. The Principal Appellant alleges that XXXX XXXX and his associates were armed at the meeting and that XXXX XXXX threatened to kill the Principal Appellant because he opposed the marriage.
- [5] XXXX XXXX and XXXX XXXX were married on May 4, 2012. The Principal Appellant testified that his cousin was excluded from the extended family as a result.
- [6] In 2013, XXXX XXXX began demanding the portion of the Appellants' ancestral property to which he would have been entitled if the family had supported the marriage. The Principal Appellant testified that the couple also wanted to live in the communal family home. The Principal Appellant testified that XXXX XXXX made threats that he would kill the Principal Appellant and that XXXX XXXX has also threatened other members of extended family who live on the ancestral property.
- [7] In order to escape strife with XXXX XXXX, the Appellants lived with the Associate Appellant's family in Haryana, a neighbouring state to the Punjab, for six months in 2015. The Appellants then returned to the Punjab.
- [8] The Appellants maintain that XXXX XXXX has been accused of numerous crimes including being involved in a breakout of six criminals from a jail in the Punjab on November 27, 2016, and killing a police officer in Gurdaspur, Punjab on April 21, 2017. The Appellant alleges that they have been harassed by the Punjab police asking about XXXX XXXX.
- [9] The Appellants left India to come to Canada in XXXX 2018; they claimed refugee protection in Canada in September 2018. NEW EVIDENCE The evidence presented by the Appellants is rejected
- [10] The Appellant seeks to admit as evidence:
- a. An affidavit from the Principal Appellant dated February 7, 2020.

- b. United Nations High Commissioner for Refugees (UNHCR) Guidelines on IFA dated July 2003.
- [11] According to the law,² I can only accept evidence that:
- i. arose after the RPD decision; or ii. was not reasonably available at the time of the decision; or iii. that you could not reasonably have been expected in the circumstances to bring to the RPD before the decision.
- [12] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible, and relevant before I can accept it.³
- [13] With respect to the admissibility of new evidence, the burden lies with the Appellant. The RAD applies a narrow interpretation of section 110(4). This is not an opportunity to complete a deficient record submitted before the RPD.⁴ It is expected that full and detailed submissions on the admissibility and the relevance of the proposed new evidence will be included.⁵ The affidavit from the Principal Appellant is not admitted as new evidence
- [14] I find that the Affidavit from the Appellant does not meet the criteria for admission as new evidence.
- [15] The affidavit from the Principal Appellant is a re-retelling of events that have already been canvassed at the RPD hearing. The Principal Appellant has not set out arguments that information in his affidavit arose after the RPD decision, was not reasonably available at the time of the RPD decision, or that he could not reasonably have been expected in the circumstances to bring to the RPD before the decision. UNHCR Guidelines on IFA dated July 2003 are not admitted as new evidence
- [16] I find that the UNHCR Guidelines do not meet the criteria for admission as new evidence.
- [17] The UNHCR Guidelines predate the RPD decision. The Appellants have not set out arguments that the guidelines were not reasonably available at the time of the RPD decision, or that the Appellants could not reasonably have been expected in the circumstances to bring the guidelines to the RPD before the decision.

ANALYSIS

- [18] My role is to look at all the evidence and decide if the RPD made the correct decision.⁶ As part of my analysis, I have conducted an independent assessment of the evidence and the arguments.⁷
- [19] When a person swears to the truth of certain allegations before the Immigration and Refugee Board (IRB), there is a presumption that those allegations are true unless there is a reason to doubt their truthfulness. This presumption of truthfulness does not apply to inferences or conclusions a witness may draw from facts, or to speculation for which there is no evidentiary basis.⁸

- [20] The presumption that a person's sworn testimony is true may be rebutted where problems are identified with the testimony. These problems may include: contradictions, inconsistencies, and omissions; incoherent or vague testimony; limited knowledge of key elements of the case; or a reliance on false documents. The Appellants' case is considered under section 97
- [21] The RPD found that the Appellants have not established a nexus to a Convention ground. The RPD considered the claim under section 97 of the Immigration and Refugee Protection Act (IRPA) 9 The Appellants have not challenged the RPD's finding on appeal. I agree with the RPD; I will consider this appeal under section 97 of IRPA. IFA Analysis
- [22] The Appellants argue on appeal that the RPD erred in finding that they have an IFA in India. I have independently reviewed the evidence and arguments. I find that the RPD did not err in analyzing the availability of an IFA for the reasons that follow.
- [23] The Appellants argue on appeal that, under the UNHCR Guidelines on IFA, they are not required to relocate again in India because the Appellants have already relocated once. I do not agree. The UNHCR Guidelines on IFA do not form part of the law and jurisprudence in Canada regarding the viability of IFAs.
- [24] The key concepts concerning IFA in Canadian jurisprudence come from two cases.¹⁰ The adjudicating panel must be satisfied, on a balance of probabilities, that:
- (1) there is no serious possibility of the claimant being persecuted or, on the balance of probabilities, subjected to a risk to life or to cruel and unusual treatment or punishment, or a danger of torture in the IFA and;
 - (2) that conditions in that part of the country are such that it would be reasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.
- [25] Jurisprudence sets out that "it is up to the refugee claimant to establish the inexistence of an IFA according to the two-part test: applicants must establish that they are at risk throughout their country and that the IFA would be objectively unreasonable given the circumstances."¹¹ The IFA meets the first prong of the test: The Appellants have not shown they would be at risk throughout India
- [26] In order to succeed under section 97, the Appellants must adduce sufficient credible evidence to establish that, on the balance of probabilities, they would personally be subjected to a risk to life or to cruel and unusual treatment or punishment, or a danger of torture in the IFA. I find that the Appellants have not met their burden of proof.
- [27] The RPD found that the Appellants' fears are speculative regarding XXXX XXXX capacity and motivation to find and harm them in either Delhi or Mumbai.¹² I agree with the RPD.
- [28] The Appellants argue on appeal that: Panel even found the claimants' fears as speculative regarding XXXX XXXX capacity and motivation to find and harm them in either Delhi or Mumbai. But the fact is these fears of the claimant were not unjustifiable. Claimant knew

about XXXX XXXX intentions very well and his compass is evidently portrayed in all the newspapers attached. Claimant even had a go at migrating to different spots like Delhi and Haryana, yet as he dreaded he was followed. So, the past encounters caused the petitioner to be speculative about XXXX XXXX compass and associations, and his theories were even consistent with a specific degree as the hoodlums have systems administration and associations in various zones of the nation.¹³ [sic]

- [29] I have no evidence before me that XXXX XXXX would have the means and motivation to harm the Appellants in either Mumbai or Delhi. The Appellants provided newspaper articles to the RPD regarding the activities of the XXXX XXXX criminal gang in which XXXX XXXX is a leader according to the Principal Appellant. The Appellants provided the RPD with First Information Reports (FIRs) filed with police by third parties that allege criminal behaviour on the part of XXXX XXXX.
- [30] When questioned by the RPD, the Principal Appellant testified that XXXX XXXX would be able to find them in the IFA locations because XXXX XXXX is part of a criminal network with wide connections in India.
- [31] When the RPD asked the Associate Appellant how XXXX XXXX XXXX XXXX could find the family to harm them in the IFA, she testified that he would be able to locate them if they went back to their village or if friends came to visit. When questioned further, she testified that XXXX circle of friends would help him locate the family.
- [32] The RPD found that: There is insufficient evidence the gang is motivated or has the capacity to track and harm the claimants. The claimants were in the Punjab for the majority of the time from when they first received threats in May 2012 until they came to Canada in XXXX 2018. Further, other family members of the claimants who have been threatened remain in the ancestral property in the Punjab. As such, the panel finds that there is insufficient evidence that XXXX XXXX or his gang has the capacity or motivation to locate the claimants in either Delhi or Mumbai.¹⁴
- [33] With respect to the time the Appellants spend in the Punjab after first being threatened, the Appellants argue on appeal that: Panel further found that claimants were in Punjab for the majority of the time from when they first received threats in May 2012 until they came to Canada in XXXX 2018. But in this time period of six years they didn't lead a life full of harmony and peace. They lived under a constant fear that either the gangster or the police authorities would harm them.¹⁵ [sic]
- [34] With respect to the fact that other members of the family remained on the family property, the Appellants argue on appeal that: Further, other family members of the claimants who have been threatened remain in the ancestral property in the Punjab. It is apparent from the facts of the case that from day one the claimant was directly being harassed by the gangster. He always wanted him to persuade his family for their marriage which claimant never did, so he had that personal vendetta against him. Gangster always tried harassing the claimant more than the other family members because of this personal bitterness and animosity.

That is why the threat to the claimants is more than the other members of the family.¹⁶

- [35] I have considered all the evidence and the arguments. I find that the Appellants have not met their burden of proof to establish that, on the balance of probabilities, they would personally be subjected to a risk to life or to cruel and unusual treatment or punishment, or a danger of torture in the IFA. The IFA meets the second prong of the test: The Appellants have not shown that the IFA would be unreasonable
- [36] The RPD found that, "There is no evidence that the claimants would not be able to access housing, employment, or education, in either Delhi or Mumbai. The panel finds that it is objectively reasonable in all of the circumstances including, each of the claimant's particular circumstances, for them to relocate to Delhi or Mumbai."¹⁷
- [37] The Appellants have not set out arguments on appeal that the RPD erred in this finding.
- [38] The Associate Appellant testified at the RPD that she was afraid that the family could not afford to live in Mumbai and educate their children. When questioned further by the RPD, the Associate Appellant testified that only day labour jobs were available in Mumbai.¹⁸
- [39] In a recent decision regarding an IFA in India, Mr. Justice Roy noted that the Federal Court of Appeal has set a very high threshold with respect to the second prong: In Ranganathan, after citing long passages from Justice Linden's reasons in *Thirunavukkarasu v Canada* (Minister of Employment and Immigration), [1994] 1 FC 589, and emphasizing the parts where the Court of Appeal insists that the IFA's attractiveness is irrelevant, the Court of Appeal found as follows:
- [15] We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations. As noted by the Court at paragraph 17, the distinction between refugee claims and humanitarian and compassionate applications should not be blurred.¹⁹
- [40] The Appellants have not provided evidence of conditions that would jeopardize their lives and safety in the proposed IFAs. While the Appellants would undoubtedly face significant challenges in relocating to Mumbai or Delhi, I find that these challenges are not sufficient to satisfy the stringent requirements set out in the second prong of the IFA test in order for an IFA to be considered unreasonable.
- [41] I find that the Appellants have viable IFAs in Delhi and Mumbai.

CONCLUSION

[42] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection. (signed) Michael J. Gardiner
Michael J. Gardiner December 8, 2020 Date 1 1951 Convention Relating to the Status of Refugees: Office of the United Nations High Commissioner for Refugees, "Handbook on Procedures and Criteria for Determining Refugee Status", under the 1951 Convention. 2 Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27, section 110(4). 3 Canada (Citizenship and Immigration v. Singh, 2016 FCA 96; Raza v. Canada (Minister of Citizenship and Immigration), 2007 FCA 385. 4 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96, at para. 54. 5 Refugee Appeal Division Rules, SOR/2012-257. 3(3)(g)(iii) how any documentary evidence referred to in paragraph (e) meets the requirements of subsection 110(4) of the Act and how that evidence relates to the appellant. 6 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 7 Tekle v. Canada (Citizenship and Immigration), 2017 FC 1040. 8 Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.), at 305. 9 Exhibit RPD-1, RPD Record, RPD Decision, at para. 7. 10 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706 (FCA); Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 FC 589, 163 N.R. 232 (F.C.A.). 11 Singh v. Canada (Citizenship and Immigration), 2020 FC 277 at para. 21 quoting Singh v. Canada (Citizenship and Immigration), 2012 FC 770 at para. 23. 12 Exhibit RPD-1, RPD Record, RPD Decision, at para. 14. 13 Exhibit P-2, Appellant's Record, Appellants' Memorandum, at p. 24, para. 30. 14 Supra, at endnote 12. 15 Ibid., at para. 31. 16 Ibid., at para. 32. 17 Exhibit RPD-1, RPD Record, RPD Decision, at para. 16. 18 Transcript of RPD Hearing on October 7, 2019, at p. 26. 19 Supra, at endnote 8, para. 20.

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Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
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