

CANADA / JUDGMENT

TC2-07701

COURT

Refugee Appeal Division

DECIDED

2 September 2022

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RAD File / Dossier de la SAR : TC2-07701

TC2-07702

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXXXXXXX XXXX

Personnes en cause

Date of decision

September 2, 2022

Date de la décision

Panel

Joshua Prowse

Tribunal

Counsel for the persons who are the subject of the appeal

Micheal Crane

Conseil des personnes en cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] XXXX XXXX (the Principal Appellant) and XXXX XXXX (Associate Appellant) have appealed a decision of the Refugee Protection Division (RPD) denying their claims.
- [2] The Appellants state that they fear returning to India as they anticipate harm from the police and members of the Communist Party in Kerala state because of the Principal Appellant's political activities with an opposition party there and because efforts are being made to dissuade the Principal Appellant from testifying about a crime that he witnessed.
- [3] The RPD dismissed these claims on the basis that the Appellants have an internal flight alternative (IFA) in Bengaluru, India.
- [4] The RPD was correct that the Appellants have an IFA. I dismiss this appeal and uphold the RPD decision that the Appellants are not Convention refugees nor persons in need of protection.¹

BACKGROUND

- [5] The Appellants are Christians from Kerala. The Principal Appellant worked as a XXXX and later as a XXXX XXXX. In 2001, the Principal Appellant became a member of the Congress Party. The Congress Party was the ruling party in Kerala from 2011 to 2016. In 2016, the Communist Party of India - Marxist (in this decision, the "Communist Party" for short) became the ruling party in Kerala.
- [6] The pivotal event at the centre of this appeal is that on XXXX XXXX, 2017 the Principal Appellant was transporting a Congress Party member when his vehicle was forced off the road by Communist Party goons. That Congress Party member was abducted. The Principal Appellant recognized one of the captors. The abducted Congress Party member was found badly beaten a day later. On XXXX XXXX, 2017, the Principal Appellant reported the attack to police. On XXXX XXXX, 2017, the Principal Appellant was detained and assaulted by police working in concert with Communist Party goons. They accused him of acting against the Communist Party and demanded he withdraw his police complaint lest he be killed. The Principal Appellant agreed to withdraw the complaint.
- [7] At that point, the Appellants decided to go into hiding and relocated to Chennai in Tamil Nadu state. Police and Communist Party members began visiting the Appellants' family and friends in Kerala, searching for them. Police indicated that the Principal Appellant was wanted for manipulating local fishermen to make false claims against the Communist Party. The Appellants obtained visas on XXXX XXXX, 2017, and travelled to Canada on XXXX XXXX, 2017.

NEW EVIDENCE AND ORAL HEARING

[8] I am considering these appeals based on the record that was before the RPD and I am not holding an oral hearing. This is so as the Appellants have not submitted new evidence. This Division cannot hold an oral hearing unless it admits new evidence.²

ANALYSIS

[9] The Appellants contest the RPD's determination that they have a viable IFA in Bengaluru. As defined in *Ranganathan v. Canada*, an IFA is viable if 1) the Appellants do not face a reasonable possibility of persecution or, more likely than not, s. 97 harm there, and 2) conditions in the IFA are such that it would not be unreasonable for the Appellants to seek refuge there.³

[10] My role is to look at all the evidence and decide if the RPD made the correct decision.⁴

[11] In assessing these cases, I considered the IRB Guideline on Gender Considerations.⁵

[12] I provided notice that the most recent National Documentation Package (NDP) would be considered in this appeal. No submissions regarding the new NDP were received.

First prong of the IFA test: Risk of persecution or s. 97 harm

[13] The Appellants argue that there are good grounds for them to fear that the agents of harm are motivated to use the resources at their disposal to target them, even if they move to the IFA location. The RPD concluded that it was not sufficiently likely that these agents of harm would be motivated to pursue the Appellants if they were living in Bengaluru. The RPD provided several reasons for this, including that:

* The Appellants relocated to another state, Tamil Nadu, after their problems began. The police were aware that the Appellants were there, but did not search for them there. The Appellants resided in that state for several months without experiencing problems.

* The Congress Party member who was kidnapped continued to reside in the same area that the Appellants previously did in Kerala. Given that it was witnessing this kidnapping that led to the Principal Appellant being persecuted, the RPD found that the abductee's ability to continue to reside in that area unmolested demonstrated a lack of motivation to harm.

* Kerala police have no independent interest in the Appellants, and do not legitimately suspect them of committing crime, but have only pursued them for the Communist Party, which is motivated to target them for political reasons.

[14] The Appellants contest these findings. I will independently evaluate the evidence about the motivation of these agents of harm.

The police and Communist party were not motivated to pursue them in Chennai

[15] The RPD found that because the police and Communist Party did not try to locate the Appellants in Chennai, they lack the motivation to locate the Appellants outside of Kerala. The Appellants contest this finding. In their submission, "two months is too short a time to found this finding."⁶ I disagree. As stated in *Ortiz v. Canada*, the absence of evidence demonstrating that agents of harm made efforts to try to find applicants supports a conclusion that the agents do not have an ongoing interest in pursuing them in a proposed IFA.⁷ The Appellants left Kerala and resided in Chennai for three-plus months prior to coming to Canada.⁸ The Appellants testified that the agents of harm had concluded the Appellants were in Chennai during this time.⁹ I find on a balance of probabilities that after the agents of harm reached this conclusion, they did not travel to Chennai or take steps to solicit assistance from the authorities there. There is a lack of sufficient information before me to show that the agents of harm procured an arrest warrant,¹⁰ obtained an order barring the Appellants from leaving the country,¹¹ or even produced a First Information Report (FIR), which is described as "the first document that needs to be prepared by the police to initiate investigations."¹² Such tools can be utilized by police to urgently pursue fugitives. I conclude that it is more likely than not that the police did not use such tools over a span of months. This weighs against the likelihood that they (and the Communist Party state officials in Kerala who can direct the police) are interested in pursuing these Appellants outside the state of Kerala.

The police and Communist party were not motivated to harm someone similarly situated

[16] The RPD found that the Congress Party member who was kidnapped was subsequently able to safely reside in Kerala. The RPD found the fact this person could safely live in Kerala indicated the agents of harm were not motivated to track and harm him, and by extension, these Appellants. The Appellants contest this finding. They note that that the Appellants were last in touch with this individual, XXXX XXXX, around the time that he provided them with a support letter for their refugee claims in XXXX of 2020.¹³ They submit that he is no longer in contact with either his family or the Appellants.

[17] In my view, this does not negate the RPD's finding, which I conclude is correct. Based on the record before me, XXXX XXXX was able to spend significant time residing in Kerala in the years after his kidnapping and attack. I accept that at this point he is not in touch with his family and the Appellants anymore. There is no evidence before me to suggest that he is incommunicado because of actions by, or fear of, the agents of harm. For example, there is no evidence that he has been harmed or kidnapped anew. XXXX has moved in and out of Kerala in the past according to the Principal Appellant's testimony.¹⁴ The Principal Appellant testified that he has been in touch with XXXX family and he did not indicate that they were concerned about XXXX well-being. To the contrary, the Principal Appellant expressed confidence that the Communist Party and police would not harm XXXX

anymore.¹⁵ The fact that XXXX has been able to spend significant time living in Kerala subsequent to his kidnapping without being harmed does indicate that the agents of harm do not have an ongoing motivation to harm him. I conclude on a balance of probabilities that the agents of harm are not motivated to harm the witnesses to this kidnapping. This detracts from the likelihood of them being motivated to harm the Principal Appellant on the basis that he was a witness to the kidnapping.

The Communist Party and/or police are not being prosecuted for kidnapping XXXX

[18] The Appellants argue that the agents of harm may try to find and silence the Principal Appellant to prevent him from testifying in any criminal prosecution related to XXXX kidnapping. I do not think that there is a reasonable possibility of this because I find that there is no such prosecution occurring. There are two reasons for this:

1. There is a lack of sufficient information to establish that a FIR was produced in this matter, a key step in a matter being investigated by police and then referred for prosecution.¹⁶ The Appellants testified that the Principal Appellant and XXXX raised the kidnapping with police,¹⁷ and "a case was registered,"¹⁸ but the Principal Appellant was not given a copy of any records. I am not satisfied that it is more likely than not that a FIR was produced. There is a legal obligation to provide an individual with a copy of the FIR that results from their report to the police.¹⁹ The fact that the Principal Appellant was not points against a FIR having been registered. The country conditions evidence indicates that it would be unusual for an oral report to a police station to have initiated a criminal process; only 5 per cent of oral complaints (where the duty officer takes down the details) are converted into FIRs in the country.²⁰ This also points against a FIR having been registered. After the Principal Appellant filed this complaint, the police helped torture him, upon which he agreed to withdraw his complaint.²¹ This also weighs against the likelihood that the police having followed proper procedures, registered a FIR, and then investigated. The Appellants offer no reason for their supposition that a FIR was registered in this case, and admit they never saw one.²² Furthermore, if a FIR is created, it is generally straightforward to obtain a copy, since almost all of them are accessible from a police website.²³ The Appellants did not retrieve any FIR. For these reasons, I conclude that, more likely than not, police did not register a FIR regarding this kidnapping.
2. There is a lack of sufficient information to establish that any prosecution has resulted from this kidnapping. The Appellants do not mention any such prosecution or trial in their Basis of Claim (BOC) form. XXXX letter to this Board does not indicate that there is any ongoing prosecution in relationship to his kidnapping.²⁴ The only information about a prosecution having resulted is that the Principal Appellant testified that he thinks that there is a prosecution, and that the court is waiting for him to return and testify so that the prosecution can proceed. However, he offers no evidence for this belief and when the RPD inquired about the basis of the belief, the Principal Appellant appeared to speculate, but allowed that he really "cannot tell [us]" and "I am not confirmed."²⁵ In a situation in which

the police in Kerala have engaged in egregious misconduct and not followed proper procedures, I am not satisfied that it is more likely than not that this matter has resulted in any prosecution, especially given the absence of any direct evidence of such.

- [19] Given that it has not been established that it is likely that there is any prosecution, I do not accept that there is a reasonable possibility of the agents of harm being motivated to silence the Principal Appellant to prevent his court testimony, especially when they have not taken such actions against XXXX in the past, who has far more direct evidence of their wrongdoing.

The police complaint does not create good grounds to fear harm in the IFA

- [20] The Appellants also present a related argument, submitting that the police may seek them out in the IFA because the Principal Appellant made a complaint to the police and did not drop it:

[T]here is more than a mere possibility that the police are interested in the Appellant because the Appellant made the complaint: When he was taken by the police on XXXX XXXX, 2017 and handed over to [Communist Party] associates, the stated concern was to prevent the Appellant in relation to participating in the complaint and it was mentioned that he should drop the complaint, which he did not do.²⁶

- [21] The Principal Appellant's evidence is that he did state to Kerala police officers that he would drop his police complaint. While he never followed up with the police afterwards, this does not appear to have been a concern for the agents of harm who have not mentioned this in recent visits that they have made to the Appellants' family.²⁷ When combined with my earlier findings about the lack of an FIR and prosecution, and XXXX safety, I am not satisfied that there is a reasonable possibility of the police pursuing the Appellants in the IFA for this reason.

Local police interest does not establish interest in pursuing the Appellants in the IFA

- [22] The Appellants argue that the "RPD did not reject the evidence that the police had been seeking the Appellant" and that "the Appellant testified that the police had inquired of his parents four or five months before the hearing." I accept that the police have continued to visit the Principal Appellant's family in Kerala to inquire about him, stating that he was wanted for an inquiry into false complaints against the Communist Party that he orchestrated.²⁸ However, while there has been police interest in the Principal Appellant, this has all been local interest. In fact, the Principal Appellant testified that the police are not really looking for him of their own accord, but in fact they are just acting on behalf of the Communist Party.²⁹ Neither these local police in Kerala nor the Communist Party branch there have demonstrated a sufficient motivation to search elsewhere in India for the Appellants, even after they learned of their whereabouts in Chennai. This is consistent with information on file about the actions of the Communist Party in India, which indicates that

it "does not have the capacity-manpower, resources and political will-to chase a person across state borders."³⁰ The Appellants state that these agents of persecution have not provided them with any charges in writing at any point in this process. The Principal Appellant testified that his family has not assisted the agents of harm or provided any information about his whereabouts; he stated that "even if they had to die, they will not tell."³¹ I concur with the RPD that, based on the evidence before me, the interest of the agents of harm is local and does not include engaging with police in other states to pursue these Appellants.

The Appellants do not face a reasonable possibility of political persecution in the IFA

[23] The Appellants submit that the RPD erred in finding that Bengaluru was an IFA since the BJP party is the party in power there and the Principal Appellant's Congress party is opposed to the BJP.³² However, he points to no evidence of persecution of Congress party members in the state of Karnataka, where the IFA is located. Australia's Department of Foreign Affairs and Trade aptly summarizes the evidence on point when they note that leaders and members of opposition parties do not face official or societal discrimination on a day-to-day basis and that, in general, given the scale of the Indian election process, elections are conducted peacefully.³³ Other panels have generally found that Congress party supporters can relocate to Bengaluru and exercise their political rights without facing a reasonable possibility of persecution.³⁴ The evidence before me supports the same conclusion for these Appellants. This conclusion may be different if the Appellants had different profiles that would place them at greater risk, but this is not the case for the Principal Appellant's low-profile activism.

The Appellants do not face a reasonable possibility of persecution as Christians in the IFA

[24] The Appellants submit that they may face problems in Bengaluru as Christians. I do not find that the Appellants have well-founded fears of persecution in Bengaluru on the basis of their Christian faiths. The Appellants highlight that attacks and other problematic incidents targeting Christians do occur in India, and in Karnataka in particular. However, these incidents are not sufficiently common for Christians with the Appellants' profiles such that the Appellants can be said to have well-founded fears of persecution.

[25] The 2021 UK Home Office report on religious minorities in India states that although there have been occasional attacks against Christians in India in recent years, relative to the size of the Christian population in India, Christians are, in general, unlikely to be subject to treatment or discrimination by non-state actors that is sufficiently serious by its nature or repetition to amount to persecution.³⁵ This is not to deny or minimize that there are instances of violence and harassment against Christians in the country, and in the state of Karnataka. The Appellants highlight that in 2009, two people died in Hindu-Christian

violence.³⁶ More common than deaths are instances of threats, harassment, and intimidation, for example disrupting prayer meetings, vandalizing Church property, confiscating religious materials, and sometimes assaulting pastors or lay people.³⁷ There are reports of 32 such incidents in the state of Karnataka in 2019, for example.³⁸

- [26] Such numbers need to be put into context, however. The state of Karnataka in which Bengaluru is located has more than 1 million Christians, including about 5.6% of the Bengaluru population as per the last census.³⁹ Australia's Department of Foreign Affairs and Trade assesses most Christians live day-to-day with low levels of societal discrimination and violence. In a 2020 survey, eighty-nine percent of Christians in India said they were "very free to practice their own religion."⁴⁰ The risk of encountering problematic incidents is reported to be higher for particular groups, such as those involved in proselytization, those involved in religious conversion of Hindus, pastors,⁴¹ Christians considered to be of low caste, and Dalit converts.⁴² The Appellants do not indicate that they fall into any such higher-risk categories. Indeed, whereas other Christians with such profiles have experienced persecution and harm in the Appellants' home state of Kerala,⁴³ these Appellants do not indicate that they have experienced problems in the past there on account of their faith. They have also never witnessed the looting or desecration of religious buildings.⁴⁴ In this context, I find that there is no reasonable possibility of these Appellants facing violence or other serious harm in the IFA on account of their faith.

The distance to the IFA location does not mean the Appellants would be more motivated

- [27] The Appellants submit that the RPD erred by referring to Bengaluru as a "distant locale." They note that Kerala and Karnataka are adjoining states. I accept this point. Within the overall context of India, a country that measures 3,214 km from north to south and 2,933 km from east to west, the IFA location is only about a 700 km (13-hour) drive from Thiruvananthapuram, where the Appellants were previously residing in Kerala.⁴⁵ At their closest points, the Kerala border is only about 250 km (a five-and-a-half-hour drive) from Bengaluru.⁴⁶ This proximity should be weighed when considering Bengaluru's viability as an IFA location. Nonetheless, there is no requirement that an IFA location be far away from where an Appellant has previously lived; as the court held in *Jilani v. Canada*, the concept of an IFA does not require that the safe haven be in another city or state of the country of origin so long as it is truly an area in which the claimant can seek refuge from persecution.⁴⁷ In this case, the Appellants point to no specific evidence that they are at higher risk by virtue of this geographical propinquity, for example that these two states' police forces cooperate more than would otherwise be the case. I conclude that the fact that the IFA location is not further away from where they were previously residing does not mean they will face a reasonable possibility of persecution or s. 97 harm.

These reasons apply the reasonable possibility test when assessing risk of persecution

[28] The RPD found that the Appellants had "failed to establish, on a balance of probabilities, that police in Kerala maintain a strong independent motivation to locate them" and the panel concluded that the Kerala police's motivation "on a balance of probabilities, would not extend to their seeking the claimants out beyond Kerala." The Appellants submit that in doing so the RPD applied the wrong legal test:

The RPD erred because the Appellants did not have to establish that the police had a strong motivation to find them. The RPD further erred in finding that the police did not have a motivation on the balance of probabilities to seek the Appellants outside of Kerala. The correct test is whether there is a mere possibility that the agents of persecution will persecute the Appellant.⁴⁸

[29] In this case, it appears that the RPD's reasons are phrased somewhat infelicitously.⁴⁹ The way I read their reasons, and the finding that I make, is that in the past and to this present time, the police have not demonstrated the motivation to seek out the Appellants in the IFA. This is a factual question decided on a balance of probabilities.⁵⁰ Based on this fact, there are no good grounds to fear future persecution in the IFA. This is a question of future risk decided on the reasonable possibility standard.⁵¹

The agents of harm not having the motivation to pursue these Appellants is dispositive

[30] The RPD made a number of findings about the ways that the Appellants could be tracked, including about their Aadhar cards, India's tenant verification system, a national database called the CCTNS, by asking the Appellants' parents for their whereabouts, through Covid-19 databases, social media, or other mechanisms available to the Communist Party. The Appellants dispute a number of these findings, including about whether the RPD incorrectly applied too high a standard when assessing whether they might be used.⁵² The fact that an agent of harm has the ability to pursue an individual is not decisive evidence that the agent has the motivation to pursue the individual.⁵³ In my view, my conclusion above that the agents of harm do not have the motivation to pursue these Appellants is dispositive of this appeal.

[31] In short, if a state government and the police are truly motivated to track an individual down, there are any number of mechanisms that they have access to in order to achieve this, such as issuing an arrest warrant. The primary reason that these Appellants do not have good grounds to fear persecution in the IFA is that the agents of harm have not shown that they are inclined to utilize such tools at their disposal. This finding is bolstered by my others above, including about Shammy's relative safety in Kerala, the passage of time, distance, lack of documents, etc.

These claims would not be decided differently if the test for torture were different

- [32] As per section 97 of the Immigration and Refugee Protection Act, a person in need of protection is a person whose removal to their countries of nationality would subject them personally to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture.⁵⁴ As per *Li v. Canada*, the requisite degree of danger of torture envisaged by the expression "believed on substantial grounds to exist" is that the danger of torture is more likely than not.⁵⁵ The Appellants argue that *Li v. Canada* should be reconsidered because the decisions of the UN Committee Against Torture regarding the meaning of "substantial grounds" have evolved since the Federal Court of Appeal decided the case. They submit that per the Committee's recent views, an applicant only needs to present "an arguable case that the danger of being subjected to torture is foreseeable, present, personal and real" to meet the "substantial grounds" test.⁵⁶
- [33] I do not accept this argument. First, the Appellants have not shown that the views of the UN Committee Against Torture are any different today than they were in 2005 when the Federal Court of Appeal decided *Li v. Canada*. Indeed, the Federal Court of Appeal in its reasons cited the very "foreseeable, present, personal and real"⁵⁷ language that the Appellants point to. The "arguable case" language was also used by the Committee at that time⁵⁸ and is considered to be synonymous with, not a qualification on, the requirement to "submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real."⁵⁹
- [34] Furthermore, this question is academic and does not arise on the facts of this case. As there is a nexus to a Convention ground, I have assessed the Appellants' risks of persecution pursuant to section 96 of the IRPA. In doing so, I have concluded that the Appellants do not face a reasonable possibility of future persecution in the IFA, using the *Adjei* test.⁶⁰ Persecution is a broader concept than torture.⁶¹ As such, in concluding that the Appellants do not have good grounds to fear persecution, I have also implicitly concluded that they would not be subjected personally to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture. The Appellants do not contest that the concept of an IFA applies to an assessment of whether an Appellant faces a danger of torture under s. 97 of the IRPA in this case.⁶² As such, even if I were to apply the "real risk" ("reasonable chance") test to assess the risk of torture in this case, as the Appellants commend, their claims would still fail.

Conclusion on first prong of IFA test

- [35] For these reasons, I conclude that the police officers and Communist Party goons that the Appellants fear in Kerala are not sufficiently motivated to use the tools at their disposal to pursue the Appellants in the IFAs and that there is not a reasonable possibility of these Appellants facing serious harm in the IFAs.

Second prong of the IFA test: Jeopardy to life or safety in the IFA locations

[36] In order for an IFA to be viable, it must not be unduly harsh to expect an Appellant to relocate and live in the IFA location. If there are conditions which would jeopardize the life and safety of an appellant in travelling to or temporarily relocating to the safe area, then it cannot be considered a viable IFA.⁶³ In this case, the IFAs that the RPD proposed are reasonable ones. The RPD reached this conclusion for several reasons, including:

* The RPD noted that the Appellants speak Malayalam and some Tamil and English, all of which are spoken in the IFA. The RPD found the Appellants' inability to speak Kannada did not render the IFA unreasonable.

* The RPD noted that the Principal Appellant has 15 years of schooling, above the national average.

* The Principal Appellant has varied work experience in India and Canada.

[37] The Appellants contest that the IFA is reasonable for them. They argue that it is significant that they are a religious minority, being Christians, and point to evidence of violence against Christians in the IFA locations.⁶⁴ I assessed their potential risks as Christians earlier in these reasons and concluded that they do not face a reasonable chance of future harm. For the same reasons, principally the relatively low prevalence of such harms, and the Appellants' profiles, it is not likely that they will face harms on this basis that would jeopardize their life or safety.

[38] The Appellants also note that they do not have a support network in the IFA. They note that a report from the Australian Department of Foreign Affairs and Trade states that "relocation in India is not straightforward, and many cultural, socio-economic and gender-based obstacles, in addition to language differences, prevail." That report goes on to note that "the absence of informal social networks that would normally assist with accommodation, employment and informal social protection may also limit relocation."⁶⁵ The Appellants have not particularized how they believe that these factors would affect their lives or safety in the IFAs. I do not find that their lives or safety would more likely than not be jeopardized by the Principal Appellant's political engagement with the Congress Party or by the Appellants' lack of support networks. Large numbers of individuals from all over the country are moving to Bengaluru, which has a burgeoning technology sector, and securing housing there, finding employment, and starting new lives.⁶⁶ It is more likely than not that these Appellants will be able to do so as well.

[39] The Appellants contest the viability of the IFA on account of the languages they speak. The Principal Appellant speaks three languages, to a greater or lesser degree, Malayalam, Tamil, and English.⁶⁷ The Associate Appellant speaks two languages: Malayalam and Tamil.⁶⁸ English, Tamil, and Malayalam are among the most-spoken languages in Bengaluru.⁶⁹ The RPD was correct that the Appellants' inability in the primary language of Bengaluru, Kannada, does not establish that their lives or safety would be jeopardized there considering

the Appellants do have ability in Malayalam, Tamil, and English, where Tamil is the 2nd most-spoken language in Bengaluru, and English the 4th most-spoken language there.

- [40] The Appellants also argue that they would not have the right to use social media in a normal way in the IFA, which is not reasonable. I have no evidence before me that the Appellants do use social media, or that they desire to do so. In any event, I found in the first-prong analysis that because of the lack of motivation of the agents of harm, the Appellants can use social media freely without encountering a reasonable chance of persecution. For the same reason, their lives and/or safety would not likely be jeopardized as a result of such use.
- [41] Finally, I considered the Appellants' profiles cumulatively to determine whether the factors which do not render the IFA unreasonable when assessed individually may do so when they are considered holistically. They do not. I put significant weight on the fact that the Appellants are a couple, where the Principal Appellant has above-average education, varied work experience, and where the Appellants have significant linguistic ability.
- [42] I am therefore satisfied that the RPD properly applied both parts of the analysis as established in *Rasaratnam*, and correctly determined that the Appellants have a viable IFA.⁷⁰ The Appellants have not shown that they face either a serious possibility of persecution, or, on a balance of probabilities, a danger of torture, a risk to their lives, cruel and unusual treatment or punishment in Bengaluru, or that it would be objectively unreasonable in their circumstances to relocate to this IFA.

CONCLUSION

- [43] 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)

"J. Prowse"

Joshua Prowse

September 2, 2022

Date

1 Pursuant to paragraph 111(1)(a) of the Immigration and Refugee Protection Act (IRPA).

2 *Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 96 (CanLII), [2016] 4 FCR 230, at para. 71.

3 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, (F.C.A., no. A-348-99), *Létourneau, Sexton, Malone*, December 21, 2000; [2001] 2 F.C. 164 (C.A.).

4 *Canada v. Huruglica*, 2016 FCA 93; *Rozas Del Solar v. Canada*, 2018 FC 1145.

5 Immigration and Refugee Board of Canada, Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board, July 18??, 2022.

6 Appellants' Memorandum, para. 31.

7 Ortiz Ortiz, Renata v. M.C.I. (F.C., No. IMM-6757-21), Pamel, July 19, 2022, 2022 FC 1066.

8 Schedule A background form, question 12, page 56 of RPD Record.

9 Transcript of second sitting of RPD hearing, page 19.

10 RAD-1, National Documentation Package, India, 30 June 2022, tab 9.2: ?Summonses, arrest warrants, and related police documents, including appearance, security features, issuance procedures, and samples (2017-June 2020). Immigration and Refugee Board of Canada. 15 June 2020. IND200261.E.

11 National Documentation Package, India, 30 June 2022, tab 14.9: ?Exit controls and security measures for Indian citizens leaving the country, including use of computerized identity verification; information sharing between police, security and airport officials, including access to the Crime and Criminal Immigration and Refugee Board of Canada. 2 March 2021. IND200495.E.

12 NDP, India, 30 June 2022, tab 9.3. FIRs are publicly available and so the Appellants would likely have been able to locate and submit one if it had been issued.

13 RPD Record, page 184.

14 Transcript of second sitting of RPD hearing, page 17.

15 Transcript of second sitting of RPD hearing, page 16.

16 National Documentation Package, India, 30 June 2022, tab 2.6: ?India. Freedom in the World 2022. Freedom House. 2022, page 15.

17 RPD Reasons, para. 14. See also Transcript of first sitting of RPD hearing, page 21.

18 Transcript of first sitting of RPD hearing, page 20.

19 National Documentation Package, India, 30 June 2022, tab 9.3: ?First Information Reports (FIRs), including procedures and time frames followed by police to inform complainants that an investigation will not be conducted (2015-May 2017). Immigration and Refugee Board of Canada. 1 May 2017. IND105779.E, page 24.

20 National Documentation Package, India, 30 June 2022, tab 1.5: ?DFAT Country Information Report: India. Australia. Department of Foreign Affairs and Trade. 10 December 2020, page 61.

21 RPD Record, page 42.

22 Transcript of first sitting of RPD hearing, page 13.

23 The Kerala police FIR download webpage is at <<https://keralapolice.gov.in/page/fir-download>>, as discussed in National Documentation Package, India, 30 June 2022, tab 3.5: Availability and prevalence of fraudulent identity documents, including membership cards of political parties (2011-April 2014). Immigration and Refugee Board of Canada. 5 May 2014. IND104839.E; page 8 and National Documentation Package, India, 30 June 2022, tab 9.8: ?First Information Reports (FIRs), including requirements and procedures to file an FIR; whether a complainant can obtain a copy; appearance and security features; whether FIRs are centralized and included in police databases, including the Crime ... Immigration and Refugee Board of Canada. 4 June 2021. IND200628.E, page 7.

24 RPD Record, page 184.

25 Transcript of second sitting of RPD hearing, page 16.

26 Appellants' memorandum, para. 39. I conclude that the reference to XXXX 2017 in this part of the memorandum is an error, since the Appellants were in Chennai at that point, and that the intent was to refer to XXXX XXXX, 2017.

27 The police are now only discussing what the Principal Appellant describes as the "fake case against me saying that I am organizing the fishermen [against the government]," See: Transcript of second sitting of RPD hearing, page 21.

28 BOC narrative, para. 10.

29 Transcript of second sitting of RPD hearing, page 22.

30 National Documentation Package, India, 30 June 2022, tab 4.7: ?Information on the Communist Party of India Marxist (CPI(Marxist) or CPI(M)) in West Bengal, including party structure, objectives and political affiliations; whether the party engages in extortion; capacity to track an extorted person who relocate ... Immigration and Refugee Board of Canada. 26 February 2016. IND105428.E, page 9. While much of the information in this memo is specific to West Bengal, other statements in it are more general ones about this party and its national capacity and coordination that would apply to its Kerala affiliate, including this one. The Appellants did not object to the RPD relying on this RIR.

31 Transcript of RPD hearing before Member Long, page 20.

32 P-2, Appellants' memorandum, para. 43.

33 National Documentation Package, India, 30 June 2022, tab 1.5: ?DFAT Country Information Report: India. Australia. Department of Foreign Affairs and Trade. 10 December 2020, page 37. That document does note that "The risk of political violence between rival supporters increases during parliamentary and state elections, especially in states where results are tightly contested.", but Karnataka is not just a state as the BJP is overwhelmingly dominant there, securing a majority of the vote in the 2019 national election, about 20% higher than the second-place Congress Party.

34 X (Re), 2019 CanLII 135210 (CA IRB), <<https://canlii.ca/t/j7qps>>.

35 National Documentation Package, India, 30 June 2022, tab 12.14: ?Country Policy and Information Note. India. India: Religious minorities and Scheduled Castes and Tribes. Version. 3.0. United Kingdom. Home Office. 10 December 2021, page 12. I cite this acknowledging that the standard before me is whether the Appellants face a serious possibility of persecution, not whether it is likely.

36 Appellants' memorandum, page 22.

37 Appellants' memorandum, pages 21-23.

38 Appellants' memorandum, page 23.

39 This type of basic fact from the Indian census constitutes a generally recognized fact pursuant to s. 171(b) of the IRPA. It may be verified on websites which reproduce the result of the most recent (2011) Indian census, e.g.: <https://www.census2011.co.in/census/city/448-bangalore.html>

40 National Documentation Package, India, 30 June 2022, tab 12.1: ?India. International Religious Freedom Report for 2021. United States. Department of State. 2 June 2022, page 3. The same survey noted concern about communal violence, but as a more general issue for the country, not a personal issue necessarily affecting the respondents.

41 National Documentation Package, India, 30 June 2022, tab 12.1: ?India. International Religious Freedom Report for 2021. United States. Department of State. 2 June 2022, page 2.

42 National Documentation Package, India, 30 June 2022, tab 1.5: ?DFAT Country Information Report: India. Australia. Department of Foreign Affairs and Trade. 10 December 2020, page 32.

43 Antony v. Canada (Citizenship and Immigration), 2022 FC 991 (CanLII), <<https://canlii.ca/t/jq412>>.

44 RPD record, page 157.

45 Their city was formerly referred to as Trivandrum. See page 156 of RPD record, Application for visitor visa. The Appellants specifically discuss living in Valia Veli, a suburb thereof: see RPD reasons, para. 12.

46 I have made note of these distances using Google Maps. In Dubow-Noor v. Canada, the court noted that panels of this tribunal can use Google Maps to identify the distance between particular points and that this is not unfair for the tribunal to do given that the information is (1) generally available to the public and (2) not novel and significant information that may affect the disposition of a case. See Dubow-Noor v. Canada, 2017 FC 35, paras. 16-18 and Ashiru v. Canada (Minister of Citizenship and Immigration), 2021 FC 1313 at paras. 47-48.

47 Jilani v. Canada (Citizenship and Immigration), 2007 FC 1354 (CanLII), at para. 13, <<https://canlii.ca/t/1vb4q#par13>>.

48 Appellants' memorandum, para. 38.

49 For example, I eschew the RPD's approach of assessing whether the agents of harm have a "strong" motivation. Instead, I adopt the approach of *Nimako v. Canada* and assess whether they are probably motivated.

50 *Nimako v. Canada* (Citizenship and Immigration), 2013 FC 540 (CanLII), at para. 7, <<https://canlii.ca/t/fxr9h#par7>>: "the issue is whether he has the probable means and motivation to do so."

51 *Adjei v. Canada* (Minister of Employment and Immigration), 1989 CanLII 9466 (FCA), [1989] 2 FC 680, <<https://canlii.ca/t/g9fkp>>, page 683.

52 Appellants' memorandum, page 9.

53 *Leon c. Canada* (Citoyenneté et Immigration), 2020 CF 428 at para. 13.

54 Immigration and Refugee Protection Act, SC 2001, c 27, s 97. Section about statelessness omitted for concision.

55 *Li v. Canada* (Minister of Citizenship and Immigration), 2005 FCA 1 (CanLII), at para. 36, <<https://canlii.ca/t/1jlvlg#par36>>, retrieved on 2022-08-19.

56 Appellants' memorandum, page 11.

57 *Li v. Canada* (Minister of Citizenship and Immigration), 2005 FCA 1 (CanLII), at para. 21.

58 *M.O. v. Denmark*, CAT/C/31/D/209/2002, UN Committee Against Torture (CAT), 17 November 2003, available at: <https://www.refworld.org/cases,CAT,404887e93.html>.

59 UN Committee Against Torture (CAT), General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, 9 February 2018, available at: <https://www.refworld.org/docid/5a903dc84.html>, para. 38. See also para. 38 of the slightly different wording of this CAT general comment at https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf

60 *Adjei v. Canada* (Minister of Employment and Immigration), 1989 CanLII 9466 (FCA), [1989] 2 FC 680, <<https://canlii.ca/t/g9fkp>>, page 683. This is akin to the standard applied in *F.G. v. Sweden*, which the Appellants cite. That decision uses the European language of a "real risk," which is akin to the Canadian "reasonable chance" test.

61 Immigration and Refugee Board of Canada, Interpretation of Convention Refugee and Person in Need of Protection in the Case Law, Chapter 14 - Persons in need of protection, December 31, 2020, <<https://irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/RefDef14.aspx#n1442>> (Accessed August 24, 2022), at 14.4.2.

62 *Sadiq v. Canada* (Citizenship and Immigration), 2021 FC 430 (CanLII), at paras. 40 and 43, <<https://canlii.ca/t/jg1lc#par40>>. See also Committee Against Torture views in *Hayden v. Sweden*, (CAT communication No. 101/1997).

63 *Ranganathan v. Canada* (Minister of Citizenship and Immigration), 2000 CanLII 16789 (FCA).

64 Appellants' memorandum, para. 42.

65 Appellants' memorandum, page 29.

66 NDP before RPD, Socio-economic profile of Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Ludhiana, Mumbai, including population, demographics and economy; tenant registration requirements (2016-April 2018), IND106101.E, tab 1.9.

67 RPD record, page 18, BOC form, question 1(g).

68 RPD record, page 33, BOC form, question 1(g).

69 NDP before RPD, 1.9 pp. 1-2.

70 Ranganathan v. Canada (Minister of Citizenship and Immigration), 2000 CanLII 16789 (FCA), [2001] 2 F.C. 164, paras. 15-16, citing Thirunavukkarasu v. Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 F.C. 589.

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Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration et du statut de réfugié du Canada

Section d'appel des réfugiés

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