

CANADA / JUDGMENT

TB9-15844

COURT

Refugee Appeal Division

DECIDED

4 February 2020

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RAD File / Dossier de la SAR : TB9-15844 TB9-15845 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision February 4, 2020 Date de la décision Panel L. Krajcovic Tribunal Counsel for the persons who are the subject of the appeal Stewart Istvanffy Conseil de la/des personne|s 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 (Principal Appellant) and XXXX XXXX (Associate Appellant) are citizens of India. They appeal a decision of the Refugee Protection Division (RPD) rejecting their claims for refugee protection. The Appellants request that the Refugee Appeal Division (RAD) allow the appeal and substitute a positive determination. DETERMINATION OF THE APPEAL
- [2] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to paragraph 111(1) (a) of the Immigration and Refugee Protection Act (the IRPA).

BACKGROUND

- [3] The Appellants allegations are as follows. The Principal Appellant is a former drug addict. The Principal Appellant alleges that in 2016, two men with whom he used to do drugs, died. Following their deaths, the deceased men's relatives threatened to harm the Appellants if they did not disclose to them the names of the dealers who sold them drugs. The drug dealers have also threatened to harm the Principal Appellant if he discloses their names.
- [4] The Appellants did not report the threats by the deceased men's relatives or drug dealers to police. The Appellants fled to Canada and made refugee claims. ROLE OF THE RAD
- [5] The RAD applies a standard of correctness for questions of fact, mixed fact and law, and law. I may defer to the RPD in assessing findings involving the credibility of oral testimony if I find that it had a meaningful advantage in the circumstances.¹ In this case, I find that the RPD did not have a meaningful advantage. ISSUES ON APPEAL
- [6] The RPD made its determination based on nexus, credibility, state protection and internal flight alternative (IFA).

[7] The Appellants argue several issues on appeal, however I find that the issue of IFA is determinative. I will consider credibility issues relating to the issue of IFA and whether there is a nexus to a Convention ground.

[8] The Appellants have not submitted new evidence on appeal and do not request an oral hearing.

ANALYSIS

The RAD finds that there is no nexus to a Convention ground

[9] The RPD found that, as the Appellants were targeted by criminals, there was no nexus to a Convention ground and assessed the claim solely under section 97 of the IRPA.

[10] The Appellants submit that victims of criminals have been found to be Convention refugees where there is a political issue linked to the criminal acts.

[11] I reject the Appellants' argument and find that the RPD did not err. The Federal Court has held that victims of crime and vendettas generally fail to establish a link between their fear of persecution and one of the Convention grounds in the definition of Convention refugee.² The Appellants have not demonstrated that there is a political issue linked to the criminal acts in this case. As a result, I find that there is no nexus to section 96 of the IRPA and have assessed this appeal solely under section 97. The RAD finds that the Appellants have an IFA in Mumbai, Delhi and Calcutta Legal test for IFA

[12] The test to be applied in determining whether there is an IFA is two-pronged:

- a. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subject to a risk to life or risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exist, of torture in the IFA.
- b. Moreover, conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for the claimant to seek refuge there.³

[13] Both prongs of the test must be satisfied to find that an Appellant has an IFA. Once the issue of an IFA has been raised and a potential IFA has been identified, the burden of proof rests with the Appellant to demonstrate that they do not have an IFA.

- [14] The Federal Court of Appeal has set a very high threshold for what makes an IFA unreasonable, requiring nothing less than the existence of conditions which would jeopardize the life or safety of the claimant.⁴ In addition, it requires actual and concrete evidence of such conditions. That being said, claimants cannot be required to encounter great physical danger or to undergo undue hardship in traveling or staying there.⁵ The RAD finds that the Appellants do not face a risk to life in Mumbai, Delhi and Calcutta
- [15] The RPD found that there was insufficient credible or trustworthy evidence to establish that these particular drug dealers have any influence, power or association with local police or police on a national level. The RPD found, on a balance of probabilities, that the documentary evidence did not support the premise that the Appellants would be at risk if they moved to any of the three suggested IFAs or that they would be found by their agents of harm.
- [16] The Appellants submit that they do not have an IFA because they are being sought by agents of the state, namely the police in India. The Appellants submit that they could not rent an apartment or work as the local police would refer their case back to their district in Punjab which would allow the police to find them. The Appellants submit that the evidence regarding the POLNET shows the extreme difficulty of living elsewhere in India.⁶
- [17] I find that the RPD was correct in finding that the Appellants did not establish on a balance of probabilities that they face a risk to their lives in the proposed IFA locations.
- [18] I reject the Appellants' arguments that they are being sought by police in India. I have reviewed the record and audio recording of the hearing and agree with the finding of the RPD that there is insufficient evidence that the drug dealers have any influence, power or association with police. The Appellants have not provided evidence on appeal to contest this finding. As a result, I find that the RPD finding that the agents of harm are the drug dealers and that the Appellants have not demonstrated that they have the ability to find them or influence the police to find them is correct and based on the information in the record.
- [19] I reject the Appellants' arguments that they could not rent an apartment or work as the local police would refer their case back to their district in Punjab which would allow the police to find them and that the evidence regarding the POLNET shows the extreme difficulty of living elsewhere in India. Aside from these brief statements, the Appellants do not provide details regarding their arguments or refer to supporting evidence. The RAD Rules require that Appellants provide full and detailed submissions regarding the errors that are the grounds of the appeal, and where the errors are located.⁷ I find that the Appellants have failed to do so. As stated by the Federal Court, the Appellant cannot simply raise an issue and expect the RAD to find evidence to support it.⁸
- [20] The RPD reviewed the country conditions evidence and found that it did not support the premise that the Appellants would be at risk if they moved to any of the three suggested IFA locations or that they would be found by their agents of harm. The RPD refers to the documentary evidence regarding the obligation of landlords to register tenants and the

connectivity and resources of police. With respect to tenant verification, the RPD Member refers to the large population of the proposed IFA locations, in addition to the documentary evidence which indicates that records are not checked systematically and are mostly checked in cases of serious crimes or terrorist threats.

- [21] The RPD notes that if the police were determined to find someone in another state, it is possible to do so, however it is not a regular occurrence and found that the "facts of this particular case would 'not warrant' the police to make special efforts to find the claimants."⁹ The RPD notes that, even assuming the police in one of the suggested IFA locations sent an inquiry to the Appellants' agents of harm, it is unlikely that the police in India would "allocate resources to track down and transport a couple with such a low profile like the claimants who are residing hundreds of miles away."¹⁰ The RPD Member notes that the Appellants have not committed a crime or been charged with any wrongdoing.
- [22] I have reviewed the documentary evidence and agree with the finding of the RPD that the Appellants have not established on a balance of probabilities that they face a risk to life in the proposed IFA locations. As indicated above, the Appellants have not established that the drug dealers have power, influence or association with police. Despite this finding, I have reviewed the documentary evidence in light of the Appellants' arguments that they could not rent an apartment or work as the local police would refer their case back to their district in Punjab which would allow the police to find them and that the evidence regarding the POLNET shows the extreme difficulty of living elsewhere in India.
- [23] The documentary evidence indicates that there is little inter-state police communication except for major crimes, such as smuggling, terrorism, and some high-profile organized crime.¹¹ Police stations across India are "virtually unconnected islands in the case of Crime and Criminal Tracking."¹² POLNET is the Police Communication Network.¹³ The Crime and Criminal Tracking and Network and Systems (CCTNS) project is a system that will allow police to talk to one another directly. The CCTNS had its origins in POLNET and it is reported that POLNET never took off, nor did its successor, the CCTNS.¹⁴ The documentary evidence indicates that the CCTNS is the only police database that exists and contains information on crime and criminals. The CCTNS has been deployed over most of India and most police stations have access to it.¹⁵ However, according to a study on the CCTNS, "police stations in India still work in silos as far as criminal information is concerned."¹⁶
- [24] The documentary evidence indicates that the police are still not able to trace a person based upon information collected under the CCTNS. Information about persons of interest is not recorded in the CCTNS, but in classified databases, which are not shared across states.¹⁷ The documentary evidence indicates that the tracking of persons is difficult and police have a mixed record of success: "if they put their minds to it, police authorities in India are able to track and locate persons of interest, depending on the heinousness of the crime and the pressure received from political authorities. For example, it is possible [for them] to locate a person of interest in cases of rape, murder or armed robbery."¹⁸

- [25] The CCTNS facilitates tenant verification by police.¹⁹ However, sources state it is impossible for the police to actually verify the identity of all those who rent property and that the police force is not equipped to personally check all new tenants. In theory, tenant verification is meant to ensure that the police are aware if a criminal or terrorist is seeking tenancy.²⁰ The documentary evidence indicates that the police force is ill-equipped and too short-staffed to actually carry out such verifications and that information about tenants is very limited. Delhi, Mumbai and a few other metropolises have intermittently tried to develop a database and verify the information, but it is "very inadequate and not updated."²¹
- [26] I find that the documentary evidence fails to support the Appellants' arguments. The documentary evidence indicates that there is little interstate police communication, except for serious crimes. Similarly, although a tenant verification system is in place, it is inadequate and, as states have separate police forces that are unconnected, interstate communication only occurs for individuals suspected of or wanted for major crimes. The Appellants testified that they do not have criminal records and have not been charged with any wrongdoing. As a result, I agree with the RPD finding that the Appellants do not have the profile that would warrant the motivation for an interstate search.
- [27] The Appellants bear the burden of demonstrating on a balance of probabilities that there is risk to their lives in the proposed IFA locations. I find that the Appellants have not met this burden. After my review of the record, including the documentary evidence, I find that the RPD was correct in finding that the Appellants have not established on a balance of probabilities that they face risk to their lives in the proposed IFA locations.
- [28] I further note that the Appellants indicate in their Basis of Claim (BOC) form²² and testimony²³ that they were in hiding for four to six months at the home of the Principal Appellant's uncle in XXXX, which is XXXX kilometres away from their village. According to the Appellants, their agents of harm did not locate them during this time. This mitigates in favour of the safety of Appellants in the proposed IFAs. The RAD finds that relocating to the proposed IFA locations is reasonable
- [29] The Appellants have not contested the RPD findings on the second prong of the IFA test, namely that relocation to the proposed IFA locations is not objectively unreasonable.
- [30] The RPD considered the Appellants' evidence regarding relocating to the proposed IFA locations, including difficulty finding employment, not having property or accommodation, not knowing anyone and that the Appellants only speak Punjabi. The RPD found the hardship associated with respect to dislocation and relocation to the proposed IFA locations not sufficient to render them objectively unreasonable or unduly harsh. Considering the Appellants do not contest this finding, I see no reason to interfere with it. It is correct and based on the evidence in the record. The negative decision does not constitute a violation of articles 7 and 12 of the Canadian Charter of Rights and Freedoms or article 3 of the Convention Against Torture

- [31] The Appellant submits that their deportation is in violation of articles 7 and 12 of the Canadian Charter of Rights and Freedoms. Further, they submit that the Appellant has the profile of someone who would be targeted for torture and that the decision does not respect article 3 of the United Nations' Convention Against Torture.
- [32] I find that the RAD is not the proper forum for these arguments. The role of the RPD is to determine the validity of claims for refugee protection pursuant to sections 96 and 97 of the IRPA. The role of the RAD is to determine whether the RPD erred in its refugee determination. The Appellants are not currently facing deportation and, as a result, this argument is premature. Further, as discussed above, the RPD correctly found, on a balance of probabilities, that the Appellants do not face a danger of torture pursuant to section 97.

CONCLUSION

- [33] Based upon all the evidence, I find that a viable IFA exists for the Appellants in Mumbai, Delhi and Calcutta. As a result, I find, on a balance of probabilities, that the Appellants would not be personally subjected to a danger of torture or face a risk to life or risk of cruel and unusual treatment or punishment in India pursuant to section 97 of the IRPA.

DETERMINATION

- [34] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to paragraph 111(1)(a) of the IRPA. (signed) "L. Krajcovic" L. Krajcovic February 4, 2020 Date 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157, paras. 70 and 103. 2 Barrantes, Rodolfo v. M.C.I. (F.C., no. IMM-1142-04), Harrington, April 15, 2005; 2005 FC 518; Prato, Jorge Luis Machado v. M.C.I. (F.C., no. IMM-10670-04), Pinard, August 12, 2005; 2005 FC1088. 3 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.), p. 710; Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 589 (C.A.); (1993), 22 Imm. L.R. (2d) 241 (F.C.A.). 4 Ranganathan v. Canada (Minister of Citizenship and Immigration), [2001] 2 F.C. 164 (C.A.). 5 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 589 (C.A.); (1993), 22 Imm. L.R. (2d) 241 (F.C.A.). 6 Exhibit P-2, Appellants' Record, at p. 45, para.49. 7 Rule 3(3)(g)(i)-(ii), Refugee Appeal Division Rules, SOR/2012-257. 8 Huang v. Canada (Citizenship and Immigration), 2017 FC 1090 (CanLII), at para. 7. 9 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 19, para. 71. 10 Ibid. 11 Exhibit RPD-1, RPD Record, Exhibit 4, National Documentation Package (NDP) for India, 29 March 2019, item 10.2, at p. 1. 12 Ibid. 13 Ibid., at p. 9. 14 Ibid., at p. 2. 15 Ibid., item 10.6, at p. 3. 16 Ibid., at p. 7. 17 Ibid., at p. 13. 18 Ibid., at p. 14. 19 Ibid., at p. 11. 20 Ibid., item 10.6, at p. 12. 21 Ibid., at p. 13. 22 Exhibit RPD-1, RPD Record, Exhibit 2, at p. 30; Exhibit 3, at p. 42. 23 RPD Hearing Recording, April 25, 2019, at 1:44:20.

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