

CANADA / JUDGMENT

MB9-11099

COURT

Refugee Appeal Division

DECIDED

24 September 2020

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RAD File / Dossier de la SAR : MB9-11099 MB9-11100 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, ON Appel instruit / entendu à Date of decision September 24, 2020 Date de la décision Panel John Helis Tribunal Counsel for the persons who are the subject of the appeal Singer, Melissa 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 XXXX (the principal Appellant), and XXXX XXXX (the associate Appellant), citizens of India, appeal to the Refugee Appeal Division (RAD) a decision of the Refugee Protection Division (RPD), dated May 2, 2019, rejecting their claims for refugee protection.¹
- [2] The Appellants purportedly fear a neighbour who has taken part of the family farm, and who is allegedly supported by the police. The RPD denied the claims on the basis that the Appellants have viable internal flight alternatives (IFAs) in Mumbai and Delhi, where they can safely and reasonably relocate.

DETERMINATION

- [3] The appeal is dismissed. I confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection.² SUMMARY OF THE FACTS
- [4] The Appellants are a couple from Nagal in the Indian state of Haryana. The principal Appellant's father owns a farm in Nagal where the principal Appellant worked until he finished secondary school and became a XXXX XXXX. His family had disputes with the owner of a neighbouring farm over the use of water and other farm-related issues. The Appellants and their family members are Sikhs, while the neighbour is Hindu.
- [5] The first alleged incident occurred on XXXX XXXX XXXX 2017, when the neighbour and "his goons", attended the farm owned by the principal Appellant's father armed with sticks and batons and forcibly took part of the land. The principal Appellant and his father reported the incident to the police the following day, but were advised to sort out the matter privately. When they sought help from the village elders they were told that they were unable to assist because the neighbour "has long hands," which they understood as implying connections

with the ruling Bharatiya Janata Party (BJP), which holds Hindu nationalist positions. The principal Appellant's father then met with the neighbour's father who insisted that "as a Hindu we can even take your entire farm". When the principal Appellant intervened and told the neighbour that he would take the issue to the courts, the neighbour "threatened us he will destroy our lives".

- [6] The principal Appellant alleges that on XXXX XXXX XXXX 2017, the police followed him home, pushed him around, and searched his XXXX XXXX. To his surprise, the police found money and ammunition in the XXXX XXXX XXXX XXXX, which he insisted he knew nothing about. He was taken to the police station where he was stripped naked, tortured, and accused of helping militants. He was released after his father paid a bribe to the police. The principal Appellant believes that his parents' neighbour has connections in the police force and was responsible for his ordeal.
- [7] On XXXX XXXX XXXX 2017, the principal Appellant and his brother visited a leader within the Indian National Congress (INC), to request help from a major political party in India. The Appellants believe that the police found out about the meeting, as they allegedly attended their home on XXXX XXXX XXXX 2017, beat the principal Appellant, and also struck their daughter, who is still unable to speak because of the injuries she sustained. The police then took the principal Appellant to the police station and tortured him. He was released on XXXX XXXX XXXX 2017, after his father and village elders paid a bribe to the police.
- [8] On XXXX XXXX XXXX 2017, the Appellants relocated to the city of Chandigarh, which serves as the capital of the two neighbouring states of Punjab and Haryana, where they stayed with an uncle. They relocated within several days and stayed with a friend after hearing that the principal Appellant's brother was arrested by the police. They later learned that the police searched for them at the uncle's house. The principal Appellant's brother was arrested again a second time and was only released after his father paid a bribe. Moreover, at the end of XXXX 2018, his brother disappeared which Appellants believe is related to the land dispute.
- [9] The Appellants left India for Canada on XXXX XXXX XXXX 2018, and filed their claims for refugee protection on July 26, 2018. THE RPD DECISION
- [10] The RPD determined that the Appellants are neither Convention refugees nor persons in need of protection because they have viable IFAs in Delhi and Mumbai.

ISSUES

- [11] The determinative issue in this appeal is the viability of IFAs in Delhi and Mumbai.
- [12] The Appellants have not submitted new evidence and are not requesting an oral hearing before the RAD. STANDARD OF REVIEW

- [13] The standard of correctness applies to this appeal as set out by the Federal Court of Appeal in *Huruglica*.³ This requires an independent assessment of the refugee claims to determine whether the RPD was correct in its findings and determinations. While deference can be afforded to the RPD on specific issues when it enjoys a meaningful advantage over the RAD in making findings of fact or mixed fact and law, such an advantage does not arise in the present case.

ANALYSIS

- [14] I agree with the RPD that the Appellants have viable IFAs in Delhi and Mumbai where they do not face persecution or harm. The incidents which they allegedly experienced concern a dispute over land between the principal Appellant's father and his neighbour in Haryana state. The neighbour and the police in Haryana state targeted the principal Appellant only after he intervened to help his father recover the land. The Appellants do not own the land in question, and the principal Appellant's father has not experienced any incidents from the neighbour or the police since the Appellants left India over two years ago. The evidence does not establish that the agents of harm are motivated to search for the Appellants or pursue them in Delhi or Mumbai, where they would not be actively involved in the land dispute. I reached this determination after conducting an independent review of the entire record, including listening to the recording of the proceeding before the RPD.
- [15] I do not accept the argument that the RPD "arbitrarily imposed Delhi and Mumbai as suggested IFAs". Refugee claimants are expected to seek protection in another part of their own country, if it is available, before they seek refuge in Canada.⁴ The notion of an IFA is inherent in the definition of a Convention refugee because refugee protection is a form of surrogate protection.⁵ Accordingly, the Appellants bear the onus to demonstrate that there is a serious possibility of persecution throughout the country, including areas identified as IFAs.⁶
- [16] The analysis for assessing an IFA has two parts according to the Federal Court in *Rasaratnam*.⁷ I must first determine whether there is a serious possibility that the Appellants will be persecuted, or whether they face, on a balance of probabilities, a risk to their lives, torture, cruel and unusual treatment or punishment in the proposed IFAs. Secondly, I must also be satisfied, after considering the Appellants' individual circumstances and the conditions in the proposed IFAs, that it would not be unreasonable to seek refuge in the IFA. An IFA will only be viable if both criteria are met.⁸ A high threshold of "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," applies equally to both parts of this test.⁹ For the reasons that follow, I find that the Appellants failed to meet their onus of proof under either prong. There is no serious possibility of persecution or risk of harm in Delhi and Mumbai

- [17] The Appellants have viable IFA options in Delhi and Mumbai where they do not face a serious possibility of persecution or a risk of harm. An IFA analysis requires a contextual approach, looking at the profile of the agents of harm, their motivation to search for the Appellants, and their ability to find them. There can only be a serious possibility of persecution if the agents of harm have both the "means and the motivation" to locate the Appellants.¹⁰
- [18] The evidence does not establish, on a balance of probabilities, that the agents of harm have the motivation to search for the Appellants throughout India because their interest is in securing land owned by the principal Appellant's father in a farming community in Haryana state. The principal Appellant confirmed in testimony that he does not own the farmland in question, and that he was only targeted by the neighbour after he intervened to help his father. According to his testimony, during the altercation on XXXX XXXX XXXX 2017, his father's neighbour told him that "this is my land, leave this land and go". It was only after the principal Appellant started to oppose the neighbour and stating that "we will take them to court and we will complain about the police", that the neighbour "threatened us he will destroy our lives", and subsequently allegedly used his contacts within the police to target him on XXXX XXXX XXXX 2017. The second alleged incident with the police on XXXX XXXX XXXX 2017, again only happened after the principal Appellant took concrete steps to help his father oppose the neighbour by seeking help from the INC.
- [19] When asked directly by the RPD member why the agents of harm would be motivated to search for him in Delhi or Mumbai, the principal Appellant only repeated that he father's neighbour "wants to get a hold of the land". Additionally, when asked by his counsel why the neighbour would still be interested in pursuing him given that he achieved his goal of securing the land, the principal Appellant indicated that the problems would only resume if he again intervenes in his father's land dispute to live on the farm, stating that "we will go live there, and whenever we will go he will create problems". Based on this evidence, I am not satisfied, on a balance of probabilities, that the neighbour of the Appellant's father, as the agent of harm, would be motivated to search for or pursue the Appellants in Delhi or Mumbai where they would be far removed and uninvolved in the land dispute.
- [20] Similarly, the evidence does not establish, on a balance of probabilities, that the police in Haryana state are motivated to search for and pursue the Appellants outside of the state and in the cities of Delhi or Mumbai. The principal Appellant claims that his father's neighbour used both his political and police contacts to turn the police against him in order to prevent him from interfering in the land dispute. This went as far as the police allegedly planting ammunition in his vehicle on XXXX XXXX XXXX 2017, which he states in his Basis of Claim form (BOC) "we knew that Police implicate me on behalf of [the neighbour] and his family (sic)". Accusations by the police that the principal Appellant has ties to militants, and their alleged inquiries at his uncle's home in Chandigarh, do not demonstrate a motivation to pursue the Appellants to the potential IFA locations given the principal Appellant's assertion that the accusations were a baseless ruse which were meant to keep him out of his father's

land dispute.

- [21] I acknowledge that the Appellants challenge the RPD's emphasis on the fact that the police did not charge the principal Appellant with an offence. Underlying the RPD's observation, however, is the fact that the police have not displayed an interest in pursuing the principal Appellant independent from his father's neighbour and his interest in securing the land.
- [22] I do not accept the submission that the agents of harm have the motivation to locate the Appellants because the RPD found them credible. Even though the RPD accepted the Appellants' allegations as credible, their evidence does not establish, on a balance of probabilities, that the agents of harm have the motivation to search for them and locate them in Delhi or Mumbai.
- [23] The Appellants submit that the RPD failed to explore the well-foundedness of the associate Appellant's claim, although her claim is based primarily on that of the principal Appellant. The Appellants have not pointed to anything in the record that would indicate that she faces a different level of risk in either Delhi or Mumbai than the principal Appellant, and I have not identified anything in my independent assessment.
- [24] The Appellants submit that the RPD used the incorrect evidentiary standard when it held that it "is far from being convinced that [the neighbour] will be able to track the principal claimant if he was to move to Delhi or Mumbai", that it cherry-picked from the National Documentation Package (NDP), when it cited that "Sikhs relocating from Punjab state to other parts of India do not have to register with the police in the area of relocation", and that it drew an erroneous analogy to the police in Punjab state when considering the evidence in the NDP in regards to the ability of the police to track someone who moves to a different state. While I acknowledge the Appellants' submissions on these points, it is unnecessary for me to address whether the agents of harm have the means to locate them since they lack the motivation to search for them.
- [25] Lastly, there is no merit to the argument that the RPD "imposed an IFA without examining the pith and substance of the claim. He did not evaluate the claim under 97(1) of the IRPA which is a breach of natural justice-specifically the right to be heard Audi Alteram Partem". The Appellants have not identified case law importing the legal doctrine of pith and substance from the constitutional context on the division of legislative powers in which it originates to the refugee context. It is entirely unnecessary to conduct a separate 97(1) analysis because an IFA is equally applicable to both Convention refugees and persons in need of protection.¹¹

- [26] For all of the reasons outlined above, based upon my own independent review of the evidence, I am satisfied that the first part of the Rasaratnam test has been met, and that 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 Delhi and Mumbai. It is reasonable for the Appellants to relocate to Delhi or Mumbai
- [27] The Appellants' submission on the second prong of the test for finding a viable IFA in their memorandum is limited to the argument that "language is an impediment in the two suggested IFAs". I do not agree. The Appellants' maternal language is Punjabi, and according to their testimony they have limited Hindi language skills. The evidence in the NDP notes that "[n]umerous languages are spoken in Delhi, although the predominant languages are Hindi, Punjabi, Urdu, and English," and "that the languages spoken in Mumbai include English, Hindi".¹² The Appellants' limited knowledge of the Hindi language does not establish that the conditions in the proposed IFA locations would jeopardize their life and safety.
- [28] The Appellants have not challenged other findings by the RPD on the second prong of the test for finding a viable IFA in their memorandum. The RPD considered relevant issues which inform the analysis of whether the proposed IFA locations are reasonable in the Appellants' specific circumstances, including the availability of employment, education, and healthcare. The RPD also correctly considered the objective evidence in the NDP which establishes that there are significant Sikh communities throughout India, including a large community in Delhi.¹³ Sikhs in India are economically and socially integrated, have the freedom to practice their religion, and can rely on local gurdwaras to access housing and other services.¹⁴ I have not identified any errors in the RPD's analysis based on my independent assessment, and find that its determination is correct.
- [29] I am therefore satisfied that the second part of the Rasaratnam test has been met, and that it would not be objectively unreasonable in the circumstances for the Appellants to relocate to either Delhi or Mumbai.

CONCLUSION

- [30] The RPD was correct in its determination that the Appellants have viable IFAs in Delhi and Mumbai, where they do not face more than a mere possibility of persecution, or, on a balance of probabilities, a danger of torture, a risk to their lives, or cruel and usual treatment or punishment. The RPD was also correct in its determination that it reasonable for the Appellants to locate to one of these cities.
- [31] I therefore dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection.¹⁵ John Helis John Helis September 24, 2020 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, ss. 111(1)(b) & 111(1)(c) [IRPA]. 2 IRPA s. 111(1)(a). 3 Canada (Citizenship and Immigration) v.

Huruglica, 2016 FCA 93. 4 Canada (Attorney General) v. Ward, [1993] 2 SCR 689 at 752. 5 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 FC 589. 6 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706 at 710. See also: Okechukwu v. Canada (Citizenship and Immigration), 2016 FC 1142 at para. 35. 7 Ibid. 8 Ibid. at 711; Calderon v. Canada (Citizenship and Immigration), 2010 FC 263 at para. 10. 9 Adebayo v. Canada (Immigration, Refugees and Citizenship), 2019 FC 330 at para. 53. 10 Nimako v. Canada (Citizenship and Immigration), 2013 FC 540 at para. 7; Mayorga Gonzalez v. Canada (Citizenship and Immigration), 2012 FC 987 at paras. 30-31. 11 Siliya v Canada (Citizenship and Immigration), 2015 FC 120 at para. 25. 12 RAD-1, National Documentation Package, India, 17 July 2020, tab 1.9: ?Socio-economic profile of Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Ludhiana, Mumbai, including population, demographics and economy; tenant registration requirements (2016-April 2018). Immigration and Refugee Board of Canada. 25 May 2018. IND106101.E pp. 5 & 10. 13 RAD-1, National Documentation Package, India, 17 July 2020, tab 12.8: Situation of Sikhs outside the state of Punjab, including treatment by authorities and society; ability of Sikhs to relocate within India; treatment of Khalistan supporters or perceived supporters outside of Punjab (2017-October 2019). Immigration and Refugee Board of Canada. 16 December 2019. IND106294.E. p. 1. 14 Ibid. pp. 2 - 3. 15 IRPA s. 111(1)(a).

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Prepared on 26 October 2026 · Esheria