

CANADA / JUDGMENT

VC1-06732

COURT

Refugee Appeal Division

DECIDED

8 March 2022

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RAD File / Dossier de la SAR : VC1-06732 VC1-06733 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXX XXXX Personnes en cause Date of decision March 8, 2022 Date de la décision Panel Kiran Qureshi Tribunal Counsel for the persons who are the subject of the appeal Tarlochan Singh Conseil de la personne 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 or PA) and his wife XXXX XXXX (Associate Appellant or AA) are citizens of India. The Appellants are Sikh and from the state of Punjab. They married in 2016 against the wishes of the PA's mother who wanted the PA to marry the daughter of a XXXX XXXX XXXX. On XXXX XXXX XXXX 2016, the day after the Appellants engagement, the PA was detained by the police and accused of Sikh separatism. He was released upon payment of a bribe. After the Appellants marriage in XXXX 2016, the AA was continually mistreated by the PA's mother. The PA applied for a visa to XXXX in XXXX 2018, which was refused. The Appellants then applied for visas to Canada in XXXX 2018, which were granted. In XXXX 2018, the PA was again temporarily detained by Punjab police on accusations of separatism. He was again released upon payment of a bribe. The Appellants relocated to Jalandhar and then travelled to Canada in XXXX 2018. They claimed refugee protection in January 2019.
- [2] The Refugee Protection Division (RPD) rejected the claims on the basis of an internal flight alternative (IFA) in Delhi or Mumbai. The Appellants appeal to the Refugee Appeal Division (RAD). They do not present new evidence. DECISION
- [3] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither Convention refugees nor persons in need of protection. The determinative issue is IFA

ANALYSIS

- [4] My role is to look at all the evidence and decide if the RPD made the correct decision.¹
- [5] The test for assessing an IFA is two-pronged. First, I must be satisfied, on a balance of probabilities, that there is no serious possibility of an appellant being persecuted in the part of the country where an IFA exists or that the appellant would not be personally subjected 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. Secondly, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all of the circumstances, including those particular to an appellant to seek refuge there. Both prongs must be satisfied to find that the appellant has an IFA. Once the issue of IFA has been raised and the potential IFA(s) have been identified, the burden of proof rests on the appellant to show that they do not have an IFA.

- [6] Based on my assessment, I do not find the Appellants have established that they do not have an IFA, as follows. First prong: Appellants would be safe in the IFAs
- [7] The RPD concluded that it was not established that the Punjab police and XXXX XXXX XXXX have the means or motivation to pursue the Appellants to an IFA. The RPD noted that the Appellants and their families are not members of a political organization or activists for a separate Sikh state and, rather, that the allegations of imputed political opinion are based on a personal vendetta from the father of a woman the PA did not marry. Furthermore, the police's methods of trying to locate the Appellants have been to approach their families and they were unable to locate the Appellants while they were in Jalandhar. The Appellants were able to renew their passports and leave India through the Delhi airport without incident, and the PA does not have a profile of being someone of interest to police outside XXXX as he has never committed a serious crime and does not have any outstanding charges or a warrant. Finally, the PA was never charged with any offence thus there is insufficient evidence to establish that he is in a police database and, in any event, there is minimal interstate police communication except in cases of major crimes, the Crime and Criminal Tracking Network and Systems (CCTNS) is not fully operational and the implementation of tenant verification systems is lacking.
- [8] The Appellants submit that the RPD accepted their allegations as credible and therefore an IFA is not possible for a person who is alleged or perceived to be a militant.² Specifically, that a FIR or Court Order is not necessary against suspected militants pursuant to the Unlawful Activities Prevention Act (UAPA), and suspected Sikh militant sympathizers are subject to monitoring, detention and torture.³ The Appellants also submit that the RPD ignored that the PA was arrested twice on allegations of separatism⁴ and ignored tenant registration rules.⁵ The Appellants refer to information in various articles they produced to the Board.
- [9] Based on my assessment, I do not find that the RPD erred by concluding that the Appellants would be safe in an IFA, as follows. Punjab police and XXXX do not have the motivation to seek the Appellants to an IFA
- [10] At the outset, I note that police forces in India are organized by state and the police agent of persecution in the Appellants case is the Punjab police. I acknowledge information in the National Documentation Package (NDP) that the police may make efforts to trace individuals in cases of terrorism⁶ and, "individuals who support or advocate for Khalistan are

monitored" and "often included on police lists for heightened scrutiny."⁷ However, the Appellants submit that the police interest in the PA arises out of a vendetta from the XXXX XXXX due to the PA's refusal to marry his daughter. In fact, there is no evidence that the Punjab police have lodged any formal case against the PA and it was the PA's own evidence that there was no arrest, charge or documents, and he was simply released upon payment of a bribe.⁸ Furthermore, while the police had the PA in their custody, they simply let him go upon payment of a bribe. Notably, the Appellants do not indicate that they are actually involved with any separatist elements. Overall, the foregoing suggests that the police accusations of imputed separatist links are not grounded in any real concern that the Appellants are actually involved with separatists. Therefore, despite the police accusations of militancy, I find that there is a lack of evidence that the police may be actually concerned or believe that the Appellants are engaged in militancy or that they pose any threat, which undermines that there would be an organized or concerted inter-state police effort to seek the Appellants to an IFA.

- [11] Furthermore, since the time the Appellants travelled to Canada in 2018, the only evidence of the police's efforts to pursue them are visits to the Appellants' respective family homes approximately once a year in 2019, 2020 and 2021. A few visits over the span of several years to an obvious location (the Appellants former primary residences) does not suggest that the police have made serious efforts to locate the Appellants, which further undermines that they would be motivated to seek them to an IFA. Notably, as the RPD noted, the police did not locate the Appellants during the time they were in Jalandhar notwithstanding that it is also in the state of Punjab.
- [12] Overall, I find there is insufficient evidence to establish that the Punjab police and XXXX XXXX would have the motivation to try to locate the Appellants to an IFA. Punjab police and XXXX do not have the means to seek the Appellants to an IFA
- [13] I also do not find that the Appellants have established that the Punjab police or XXXX XXXX have the means to locate the Appellants to an IFA.
- [14] First, according to information in a Response to Information Request (RIR) in the NDP there is generally little inter-state police communication in India⁹ and, "India does not have a centralised registration system in place to enable the police to check the whereabouts of inhabitants in their own state, let alone in any of the other states or union territories" (UTs) (Australia 10 Dec. 2020, para. 5.39). Hanif Qureshi, the Inspector-General of Police in the state of Haryana, indicates that India does "not have any national data[b]ase of criminals or gangs against which suspects can be identified" (Qureshi 9 Jan. 2020). The same source further indicates that police systems between districts and states are not integrated, creating "[i]slands of technology" which can only communicate within a state or district (Qureshi 9 Jan. 2020). Qureshi notes, for example, that a police officer issuing a traffic ticket would not be aware of the individuals' traffic violation history in other states, and "mostly [not] even within the state" (Qureshi 9 Jan. 2020).¹⁰

- [15] The NDP also indicates that police stations across India are, "virtually unconnected islands in the case of Crime & Criminal Tracking. There is no system of effective data storage ... sharing and accessing data," and there is "no single system" by which a police unit can "talk to another directly" [references omitted].¹¹
- [16] Second, there is a lack of evidence to establish that the PA has been entered into any police or crime database in the first place, such as the CCTNS such that he could be traced to an IFA through any coordination between the Punjab police and police in the IFA. For example, as stated above, there is a lack of evidence to suggest the Punjab police lodged any formal case against the PA and it was his own evidence that there was no arrest, charge or documents, and he was simply released upon payment of a bribe.¹² In addition, a source consulted in a RIR expressly indicates with respect to extrajudicial arrests " '[n]o official record of such arrests is maintained' in official criminal databases, including CCTNS. [references omitted]"¹³ Regarding information from a general diary or daily diary that may be captured in the CCTNS, there is insufficient evidence to establish that this might include information on the PA. Finally, the NDP indicates that information on "persons of interest"¹⁴ is not even recorded in the CCTNS in the first place but, rather, in classified databases that are not shared across states.¹⁵ Although I do not find that it has been established that the Appellants are in such a classified database, I acknowledge that the NDP goes on to say that concerned officers can seek such information "through normal official channels,"¹⁶ However, in the unlikely event that the Appellants are in a classified database, I nevertheless find there is insufficient evidence to establish that police in an IFA would have any cause to look beyond the CCTNS for the purposes of conducting standard checks such as for employment or tenancy, such that they might seek information directly from the UP police's classified database.
- [17] I also acknowledge evidence in the NDP that there may be inter-state police communication in cases of terrorism, however I do not find that this applies to the Appellants as I have found that it has not been established that the police may be genuinely concerned that the PA is involved in terrorism or is a threat. I also acknowledge that according to another RIR if the police "put their minds to it,"¹⁷ they could track and locate persons of interest, depending on the heinousness of the crime and the pressure received from political authorities, such as in in cases of rape, murder or armed robbery.¹⁸ However, the Appellants claim does not involve such allegations.
- [18] Third, as noted previously, the evidence indicates that the Punjab police's means to locate the Appellants has been by visiting their parents' homes on a sporadic basis. However, it appears the Punjab police are not even aware that the Appellants are out of the country, and the PA specifically testified that the police told the AA's father they were unable to locate the Appellants.¹⁹
- [19] Finally, in terms of any paper-based tenant verification procedure, even if it is mandatory for landlords to register their tenants, ultimately it is up to the local police stations to do the actual verification. However, the NDP evidence suggests that police compliance is lacking.

For example, one RIR20 refers to an article from India Today indicating that where Delhi Police attempted to verify tenants but "in almost all cases, the police of other states fail to even give any revert on the case." An article from Mail Today indicated that in a visit to about 25 police stations in Delhi, in most police stations the verification forms were found dumped, gathering dust with no action being taken to complete the procedure. Specifically, with respect to Mumbai, a Mumbai Police Commissioner stated that "it is impossible for the police to actually verify the identity of all those who rent property" in Navi Mumbai, that "the police force is not equipped to personally go and check all new tenants," [references omitted] and the police does not "have enough men to do thorough checks on each verification form that comes to [them]. [They] can ensure checks against fake documents by asking for multiple documents proof, but that's about it." [references omitted]²¹ The same NDP evidence also cites a lawyer as stating that the entire process of tenant verification "has several loopholes", the cops are often unfamiliar with the rules of the tenancy act, "they don't even do spot checks, taking the written document as the final word, which generally leads to discrepancies" and the "police force is just ill-equipped and short-staffed to actually carry out such verifications when they get over 50 forms daily."²² According to an Associate Professor, "[i]nformation about tenants is very limited and Delhi/Mumbai and a few other metropolises have intermittently tried to develop a database and verify the information. To the best of [his] knowledge, this is very inadequate and not updated regularly."²³ I acknowledge that, according to a RIR, tenant registration can be performed through a Digital Police portal that would provide access to authorized persons to use National Database of crime records. ²⁴ However, I have already found that the Appellants have not established that they might have been entered in any crime database in the first place.

- [20] Overall, I find that there is insufficient evidence of the Punjab police and XXXX XXXX having the means to locate the Appellants to an IFA. Appellants would not be at risk based on religion or actual or imputed political opinion
- [21] The RPD considered the treatment of Sikh persons and advocates of an independent Khalistan and concluded that the Appellants do not face a serious possibility of persecution in the IFAs on the basis of religion or actual or imputed political opinion.²⁵ I have considered the RPD's reasons in this regard and agree with them. I further note that according to an RIR,²⁶ while there are instances of communal violence, "cases of localized conflict or harassment by Hindu nationalists... does not represent a systemic pattern." [references omitted][emphasis added] In addition, while there have been "reports of minor cases of violence against Sikhs,"²⁷ [references omitted][emphasis added] and item 12.10 of the NDP indicates that targeting of Sikhs is to a "lesser degree" or "less frequently" than other religious minorities.²⁸ In addition, as noted by the RPD, the Appellants are not politically active or advocates for an independent Khalistan, and there is insufficient evidence to establish they would be at risk of persecution for being imputed as such in the IFAs.

- [22] Therefore, while I accept that there is communal violence in India which affects Sikhs, I find there is insufficient evidence to establish that the Appellants would face a serious possibility of persecution on the basis of religion or real or imputed political opinion in the IFAs. Appellants would be safe from the PAs mother and sister in an IFA
- [23] I note that the Appellants suggest in this appeal that the AA faces a risk from her mother-in-law and sister-in-law.²⁹ I am not persuaded.
- [24] First, the Appellants made no claim before the RPD that the AA was at risk of persecution from her sister-in-law, and led no evidence in this regard. Therefore, I find the Appellants have failed to establish that the AA has a well-founded fear of persecution from her sister-in-law.
- [25] Regarding the mother-in-law, the Appellants testified that they have not been contacted by her and they have no information as to her whereabouts.³⁰ I acknowledge that the AA testified that the mother-in-law is "hand in gloves with the police."³¹ However, I note that the AA also testified that the mother-in-law was aware of the Appellants relocation to Jalandhar,³² yet the Appellants were not located by the police. I find this undermines that the mother-in-law is connected with the police or that the AA would be at risk of persecution in the IFA from her based on any connections she may have with the police. Finally, while it is the Appellants obligation to establish their claims, they have led no evidence of what means or motivation the mother-in-law has that could enable her to harm or persecute the AA in an IFA.
- [26] Overall, I find that the Appellants have failed to establish that the AA would be at risk from her mother-in-law or sister-in-law in the IFAs. Second prong: Relocation is not unreasonable
- [27] The RPD concluded that the conditions in the IFA were not such that it would be unreasonable for the Appellants to relocate there. In respect of analyzing the reasonableness of a proposed IFA under the second prong, the Federal Court of Appeal has held that there is: ...[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.³³
- [28] The Court has reiterated the importance of not lowering that threshold.

- [29] In Thirunavukkarasu, the Court said: ...[N]either is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.³⁴
- [30] The RPD noted that the Appellants are young, healthy and well-educated, and have been able to secure employment and navigate living in Canada since XXXX 2018. Also, the PA speaks Punjabi and English and both Appellants studied English and Hindi in school. The RPD also considered the Appellants Sikh faith and concluded that while they may encounter language barriers in the IFA, the conditions overall are not such that the relocation to the IFA would be unreasonable. The Appellants do not dispute these findings.
- [31] Having considered the evidence independently, I agree with the RPD's reasons. Furthermore, while I acknowledge that the Appellants testified that the relocation would not be reasonable due to the risk of Hindu-Sikh violence, as discussed above, the risk in this regard is low and would not render relocation to the IFA unreasonable.

CONCLUSION

- [32] Overall, based on the foregoing analysis, I find that the Appellants do not face a serious possibility of persecution under s. 96 or, on a balance of probabilities, one of the harms set out under s. 97 of the Immigration Refugee Protection Act in the IFAs, and that the conditions in the IFAs are not such that it would be unreasonable, in all the circumstances, including those particular to the Appellants, for them to seek refuge there.
- [33] 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) xxxxxxxx xxxxxxxx March 8, 2022 Date 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 2 Exhibit P-2, Appellant's record, at pp. 4-6, paras. 15-16. 3 Ibid., at p. 6, paras. 16-19. 4 Ibid., at p. 7, paras. 20-21. 5 Ibid., at p. 8, para. 26. 6 National Documentation Package (NDP) for India, (June 30, 2021), item 10.2: ? Communication between police offices across the country, including the use of POLNET; whether police across India can locate an individual, particularly as a result of registration requirements for employment, housing and education, security checks...Response to Information Request (RIR), IND105494.E, Immigration Refugee Board (IRB), May 10, 2016. 7 Ibid., item 4.4: ?The Shiromani Akali Dal (Amritsar) (SAD(A)) [Shiromani Akali Dal (Mann); SAD(M); SAD(Amritsar); Shiromani Akali Dal (Amritsar) (Simranjit Singh Mann)], including origin, structure, leadership, objectives, and activities; requirements and procedures ... RIR, IND200258.E, IRB, June 3, 2020. 8 Transcript of RPD hearing, August 21, 2021 at p. 13 line 27 onwards. 9 NDP for India, (June 30, 2021), item 10.2: ?Communication between police offices across the country, including the use of POLNET; whether police across India can locate an individual, particularly as a result of registration requirements for employment, housing and education, security checks...RIR, IND105494.E, IRB, May 10, 2016. 10 Ibid., at item 10.13,

Response to Information Request (RIR), IND200626.E, Immigration and Refugee Board of Canada (IRB), May 26, 2021, at p. 1. 11 Ibid., at item 10.2: ?Communication between police offices across the country, including the use of POLNET; whether police across India can locate an individual, particularly as a result of registration requirements for employment, housing and education, security checks..., RIR, IND105494.E, IRB, May 10, 2016 at pp. 1-2. 12 Transcript of RPD hearing, August 21, 2021 at p. 13 line 27 onwards. 13 NDP for India, (June 30, 2021), item 10.13: ?Police databases and criminal tracking, particularly the Crime and Criminal Tracking Network and Systems (CCTNS); relationship with the Aadhaar and tenant verification systems; capacity to track persons through these systems (2019-May 2021), RIR, IND200626.E, IRB, May 26, 2021 at p. 7. 14 Ibid., item 10.6: ?Surveillance by state authorities; communication between police offices across the country, including use of the Crime and Criminal Tracking Network and Systems (CCTNS); categories of persons that may be included in police databases... RIR, IND106120.E, IRB, June 28, 2018 at p. 13. 15 Ibid. 16 Ibid. 17 Ibid., at p. 14. 18 Ibid. 19 Transcript of RPD hearing, August 21, 2021 at p. 25 at line 38. 20 Ibid., at item 14.8: Requirements and procedures for tenant registration (or tenant verification), including implementation, particularly in Delhi, Mumbai, Kolkata and Bengaluru (2016-May 2019), RIR, IND106289.E, IRB, May 14, 2019. 21 Ibid., item 10.6: ? Surveillance by state authorities; communication between police offices across the country, including use of the Crime and Criminal Tracking Network and Systems (CCTNS); categories of persons that may be included in police databases... RIR, IND106120.E, IRB, June 28, 2018 at p. 12. 22 Ibid., at p. 13. 23 Ibid., at pp. 12-13. 24 Ibid., at p. 1. 25 Exhibit RPD-1, RPD record, RPD Reasons at pp. 11-13, paras. 26-31. 26 NDP for India (June 30, 2021), Item 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), RIR IND106294.E, IRB, December 16, 2019 at p. 5. 27 Ibid. 28 Ibid., at Item 12.10, A Narrowing Space: Violence and discrimination against India's religious minorities, Minority Rights Group International; Center for Study of Society and Secularism, June 29, 2017 at p. 8. 29 Exhibit P-2, Appellant's record, at p. 8. 30 Transcript of RPD hearing, August 21, 2021 at p. 10 line 25 onwards. 31 Transcript of RPD hearing, August 21, 2021 at p. 35 lines 30-31. 32 Transcript of RPD hearing, August 21, 2021 at p. 37 at line 7. 33 M.C.I. v. Ranganathan (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000; [2001] 2 FC 164, at para. 15. 34 Thirunavukkarasu v. M.E.I. (F.C.A., no. A-81-92), Heald, Linden, Holland, November 10, 1993; [1994] 1 F.C. 589 (C.A.).

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Prepared on 26 October 2026 · Esheria