

CANADA / JUDGMENT

TB9-08336

COURT

Refugee Appeal Division

DECIDED

2 September 2020

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RAD File No. / No de dossier de la SAR : TB9-08336 TB9-08337 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal,
Quebec Appel instruit / entendu à Date of decision September 2, 2020 Date de la décision Panel
Me Love Saint-Fleur Tribunal Counsel for the persons who are the subject of the appeal Me Marie-
José Blain 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] The principal appellant, XXXX XXXX XXXX, and his wife, XXXX XXXX XXXX, are citizens of India. They allege that they fear returning to their country out of fear that members of the religious group Dera Sacha Sauda (DSS), in collusion with the police, will harm them because the principal appellant left that group and spoke out against it. The male appellant allegedly joined the group in 2011 and left it in 2015, fearing the DSS's castration practices. He allegedly told other followers that he did not want to be castrated.
- [2] On March 7, 2019, the Refugee Protection Division (RPD) rejected the appellants' claims for refugee protection because it concluded that internal flight alternatives (IFAs) were available to them in the cities of Mumbai and Bangalore.
- [3] The appellants are appealing the RPD's decision rejecting their refugee protection claims. They allege that the RPD erred in applying the law to the facts in concluding that the principal appellant was not at risk of persecution in India.
- [4] In my view, the determinative issue for the Refugee Appeal Division (RAD) is whether the RPD erred in its assessment of the IFAs in the cities of Mumbai and Bangalore. After a comprehensive and independent analysis of the evidence presented, I am of the opinion that the RPD's decision in this regard is correct. Therefore, I dismiss this appeal and confirm the RPD's determination.

DETERMINATION

- [5] I dismiss the appeal. I am of the opinion that the RPD correctly determined that the appellants are neither "Convention refugees" nor "persons in need of protection." ROLE OF THE REFUGEE APPEAL DIVISION
- [6] The RAD must apply the correctness standard of review, in accordance with the Federal Court of Appeal's decision in *Huruglica*.¹ The exception to this rule arises when the RPD enjoyed a meaningful advantage in assessing credibility.² In my view, the RPD did not enjoy any particular advantage in this case. I will therefore apply the correctness standard of review in conducting my own analysis of the record, including listening to the recording of the hearing, to determine whether the RPD erred. ANALYSIS OF THE MERITS OF THE APPEAL Internal flight alternative, first prong
- [7] The RPD concluded that the appellants had failed to demonstrate that they would face a serious possibility of persecution in Mumbai or Bangalore at the hands of the religious group DSS with whom the police were allegedly colluding. Based on my own analysis of the record, I am of the opinion that the RPD's decision is correct in this regard for the reasons that follow. Dera Sacha Sauda's interest in appellants
- [8] In my opinion, the appellants failed to demonstrate that the DSS would have an interest in them today if they returned to India, a country they left in 2016.
- [9] The male appellant states that he joined the group in 2011; that he was a member of the group's broader circle XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX; that he was informed in 2013 about the castration of members; and that he stopped being part of the group in August 2015. The male appellant allegedly made known to members of the group that he did not want to be castrated.³ Since the appellants left India, the leader of the DSS has been arrested by Indian authorities, prosecuted, found guilty and sentenced to life in prison for multiple crimes, including sexual assault and the murder of a journalist. Three of his accomplices and sect members were also sentenced to life in prison. Like the RPD, I find that nothing in the documentary evidence indicates that following the arrest of its leader, the DSS has been targeting former followers who deserted the movement or any of the 400 men seeking recourse for castration.⁴ In the circumstances, I am of the opinion that the appellants have failed to demonstrate that the DSS has an interest in pursuing them across India, and in the cities of Mumbai and Bangalore in particular, nearly five years after the principal appellant left the group.
- [10] The appellants allege that the RPD failed to take into account the principal appellant's particular situation of having been persecuted by the DSS, and instead relied solely on the documentary evidence concerning this group's general situation in India. In my view, this is not what the RPD did. First, the fact that the principal appellant had problems with this group in 2015 and 2016 or that, as the appellants allege, the group persecuted them, is not sufficient to establish that there is a serious possibility that the group would persecute them

in the future, if he returned to the country today. Second, the fact that the principal appellant was born Sikh and has practised that religion since he was a child, as well as his status as a former DSS member, are all part of his profile, and in my opinion, the RPD weighed these aspects of his profile judiciously in analyzing the documentary evidence and the risk he would face in the proposed IFAs of Mumbai and Bangalore should they return to the country.

- [11] The appellants submit that the RPD erred in its interpretation of the documentary evidence, particularly Tab 4.17 of the National Documentation Package (NDP) on India,⁵ by stating that it is DSS members who continue to be the targets of attacks, as opposed to former members who speak out against the group. They argue that although the document does mention targeted political killings of Hindu and DSS militants, it does not suggest that only DSS members face a real threat. They argue that the RPD cannot infer from this document that they do not face a serious risk, given that the group has persecuted them in the past. In my opinion, this is not a case in which the RPD considered only a portion of the evidence or failed to consider the principal appellant's particular profile, but rather one in which it simply arrived at the conclusion—that I agree with—that the documentary evidence does not show that, since the leader and three of his followers were sentenced, the group has been persecuting former members, as in the case of the principal appellant.
- [12] Furthermore, I note, as have the RPD and the appellants, that Tab 12.6 of the NDP, which contains the most detailed information on the DSS, does not indicate that the group persecutes former followers years after they have defected, as did the principal appellant, who states that he left the group in August 2015.⁶ The sole references to the DSS in either the NDP that was in effect on the date of the hearing or in the current NDP state that in January 2017, a bombing targeted a Congress candidate and leader of the DSS and that in February 2017, two of the group's followers were killed near Ludhiana.⁷ Like the RPD, I am of the opinion that if the DSS were making attempts on the lives of Indian citizens, targeting the lives of former followers and posing a danger to them across India, this would be indicated in the NDP. Although it is reported in an article dated September 28, 2017, that DSS dissidents were threatened, this does not demonstrate that the DSS is threatening the lives of former followers; this observation is all the more striking in light of the preceding remarks concerning the documentary evidence. It is not a matter of requiring the appellants to produce evidence that the DSS followed through on its threats or of overlooking portions of the evidence, but rather of simply acknowledging the nature of the documentary evidence. In light of the foregoing, I conclude that the evidence on the record does not show that former DSS members are persecuted by the group years after they leave.
- [13] With respect to the appellants' criticism of the fact that the RPD refers in its decision to information in the documentary evidence concerning the authorities' arrest of a comedian for imitating the leader of the DSS, I do not find this information to be of much use in assessing the risk the appellants would face in India.⁸

- [14] Moreover, I am of the opinion that the appellants have failed to demonstrate, on a balance of probabilities, that the police and the DSS came looking for them at the principal appellant's family's home in XXXX in XXXX 2018 and that, consequently, this allegation does not demonstrate that they face a risk at the hands of the DSS and the police in the cities of Mumbai and Bangalore.
- [15] The appellants neglected to mention this information in their Basis of Claim Form (BOC Form) and did not mention it until the hearing. They explained to the RPD that they left this information out of their BOC Form because they thought they could mention it at the hearing. I do not find this explanation satisfactory. The appellants were represented by an experienced lawyer when they prepared and submitted their BOC Form, which they signed to certify that the information it contained was complete and that their declaration had the same force and effect as if made under oath. The fact that the DSS and the police, whom the appellants still allegedly fear, were looking for them at the principal appellant's parents' home in 2018 and therefore had an interest in them in 2018 constitutes a key element of their fear of returning. In my opinion, as this assertion has not been established, it must be noted that the DSS, in collusion with the police, has shown no interest in the appellants since they left the country in 2016.
- [16] In light of the foregoing, I am of the opinion that the appellants have failed to demonstrate that they would face a serious possibility of persecution at the hands of the religious group DSS in either Mumbai or Bangalore nearly five years after the principal appellant left the group. Tenant registration system, operation of the police and city density
- [17] The appellants argue that the RPD failed to consider the fact that although the tenant registration system has shortcomings in some regions of the country, the documentary evidence notes that it is indeed in place in various regions in India, including in Mumbai.⁹ They also submit that despite the fact that India has no national police force, police departments use the Crime and Criminal Tracking Network and Systems (CCTNS) database and searches in this database may be motivated by money, political influence, personal vendettas or actual or alleged criminal acts.
- [18] In my opinion, in light of the preceding findings concerning the DSS's interest in the appellants, I am of the opinion that the existence of the CCTNS and a tenant registration system in India is not sufficient to show that if they returned to India today, to either Mumbai or Bangalore, the principal appellant and his wife would face a serious risk of persecution by the DSS, whose leader and three of its members have been arrested by the Indian police, prosecuted and sentenced to life in prison since the appellants left the country.

- [19] With respect to the appellants' argument that it must not be presumed that major urban areas can serve as IFAs solely because of population size, I am of the opinion that these IFAs are safe for them, not specifically because of their large population, but because the appellants have failed to demonstrate that the DSS would be sufficiently interested in them to seek them out and harm them in either Mumbai or Bangalore. Internal flight alternative, second prong
- [20] The RPD concluded that, beyond their fear for their safety, the appellants offered no additional reasons that would prevent them from moving to the proposed cities. The appellants have not contested this conclusion on appeal. I see no errors in the RPD's analysis or decision on this point.

CONCLUSION

- [21] Pursuant to paragraph 111(1)(a) of the Immigration and Refugee Protection Act, the RAD dismisses the appeal and confirms the RPD's determination that the appellants, XXXX XXXX XXXX and XXXX XXXX XXXX, are neither "Convention refugees" nor "persons in need of protection." (Signed) Love Saint-Fleur Me Love Saint-Fleur September 2, 2020 Date IRB translation Original language: French 1 Canada (Minister of Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 2 Canada (Citizenship and Immigration) v. Huruglica, No. A-470-14, Gauthier, Webb, Near, March 29, 2016; 2016 FCA 93. Rozas del Solar v. Canada (Minister of Citizenship and Immigration), No. IMM-2645-17, Diner, November 14, 2018; 2018 FC 1145. 3 Refugee Protection Division (RPD) record, Document 2 - Principal appellant's Basis of Claim Form. 4 RPD record, Document 5 - Newspaper articles in a bundle submitted by the appellants on February 11, 2019, pages 482 et seq. 5 RPD record, Document 4 - National Documentation Package (NDP) on India, December 4, 2018, Tab 4.17: Treatment of political activists and members of opposition parties in Punjab; treatment of perceived supporters of Sikh militancy by authorities (2017-April 2018). Immigration and Refugee Board of Canada (IRB), June 14, 2018. IND106097.E. This document is also found in the NDP on India dated July 17, 2020, at Tab 4.9. 6 NDP, India, December 4, 2018, Tab 12.6: Treatment of Dera Sacha Sauda practitioners by political parties, society and government authorities (2009-April 2012). IRB, May 4, 2012. IND104064.E. This document is also found under the same tab of the NDP on India of July 17, 2020. 7 Supra, endnote 5, p. 8. 8 Appellants' record. Appeal memorandum, pp. 21 and 22. 9 NDP on India, December 4, 2018, Tab 14.8: Requirements and procedures for tenant registration, including implementation, particularly in Delhi, Mumbai, Kolkata and Bangalore (2009-April 2013). IRB, May 9, 2013, IND104372.E. This information is also found in the NDP on India dated July 17, 2020, Tab 14.8: Requirements and procedures for tenant registration (or tenant verification), including implementation, particularly in Delhi, Mumbai, Kolkata and Bengaluru (2016-May 2019). IRB, May 14, 2019. IND106289.E.

RAD File No. / No de dossier de la SAR : TB9-08336 TB9-08337 RAD.25.02 (January 2020)
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Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
RAD.25.02 (January 2020) Disponible en français

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Prepared on 26 October 2026 · Esheria