CANADA / JUDGMENT

Mukhal v. Canada (Citizenship and Immigration)

2020 FC 868

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Decision Content

Date: 20200831

Docket: IMM-6716-19

Citation: 2020 FC 868

Ottawa, Ontario, August 31, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

BALVIR SINGH MUKHAL

BALVIR KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD], dated October 22, 2019 [Decision], in which the Panel Member found that the Applicants had an Internal Flight Alternative [IFA] in Mumbai or Delhi, India.

[2] For the reasons that follow, this application is dismissed.

II. Background

[3] The Applicants, Mr. Balvir Singh Mukhal and Mrs. Balvir Kaur are husband and wife from the

village of

Bahopur , in the state of

Punjab ,

India

. Between 2004 and August 2015, Mr. Mukhal would travel to different Arabic countries to work, and when he was home, would work on the family farm. Mr. Mukhal's father also worked on the farm, however, when he became ill, Mrs. Kaur would assist with the various chores so that the farm continued to operate.

[4] At some point while Mr. Mukhal was working abroad, one of his relatives, a Mr. Gurpal Singh, began harassing his family, seeking to take over their land and other property. The Applicants state that Mr. Singh had close connections with the police and local politicians, and with their assistance, would pursue various illegal activities, including regularly taking over other people's land and selling narcotics.

[5] Mr. Singh would damage the Applicants' crops, physically confront and harass Mrs. Kaur, began gazing at her inappropriately and tried to take advantage of her while Mr. Mukhal was abroad. Mrs. Kaur complained to the police and village council on several occasions, but to no avail.

[6] In July 2014, Mr. Singh stopped Mrs. Kaur, pushed her, and tried to impose himself forcefully on her. Mrs. Kaur managed to get away and complained to the police. The police ignored her cries for help, and instead suggested to her that she settle the matter with Mr. Singh as he had acknowledged, and was remorseful of, his inappropriate actions. Eventually, Mrs. Kaur settled matters with him, with Mr. Singh formally acknowledging his inappropriate behaviour.

[7] Yet thereafter, Mr. Singh renewed his disrespectful advances on Mrs. Kaur and continued harassing her anew. Mr. Mukhal was still working abroad, so Mrs. Kaur's brother Satwinder, who resided nearby, came to stay with her on several occasions in order to look after her. Satwinder stood up to Mr. Singh, who viewed the former as an obstacle to his illicit intentions. Mr. Singh threatened Satwinder on several occasions, and went so far as to claim to the police that armed individuals would visit Satwinder, and would then threaten to kill Mr. Singh.

[8] In July 2015, the local police arrested Satwinder along with a friend and falsely accused them of having worked with Sikh militants. The police questioned Satwinder and his friend about an earlier attack perpetrated by Sikh militants on a police station, and efforts to incite others in the area against the government and the

Punjab police.

[9] After two days, Satwinder and his friend were released upon the payment of bribes and with the assistance of "influential people". Certain conditions were imposed upon them by the police; in particular, they were prohibited from returning to the Applicants' village where Satwinder had been staying with his sister and disrupting Mr. Singh.

[10] After Mr. Mukhal returned to his home in August 2015, Mr. Singh began harassing and threatening him as well, accusing him of criminal activity. Mr. Mukhal sought assistance from the village council, however continued to suffer harassment and the damaging of his crops by Mr. Singh.

[11] In January 2016, Satwinder was again arrested, tortured, falsely accused of undertaking illegal activity. He was questioned about other Sikh militants and about a previous attack on an air force base by suspected militants. Satwinder was eventually released after the payment of bribes and the further intervention of "other influential people" in the village, and was burdened with additional conditions – it is not clear what those additional conditions were. Satwinder soon after began to suffer from depression.

[12] Satwinder's friend who had been initially arrested with him managed to escape, and since then his whereabouts are unknown; the police claimed that he joined the militants.

[13] On March 1, 2016, Satwinder reported to the police station as per the conditions imposed on him, but was never heard from again. When enquiries were made by the family, the Punjab police said that Satwinder never showed up at the station, and in fact began to press the Applicants to confirm his whereabouts. The police surmised that he too had joined the militants.

[14] The Applicants searched for Satwinder, but to this day, his whereabouts are unknown. The police continued to threaten and harass the Applicants and Mrs. Kaur's parents, questioning them about Satwinder and other militants. The Applicants relied on the assistance of friends and "influential people", as well as the payment of bribes, in order to keep the police at bay.

[15] On April 10, 2016, the police raided and searched the Applicants' home. They questioned the Applicants in relation to the whereabouts of Satwinder, accusing the family of harbouring Satwinder and other militants. The police arrested Mr. Mukhal's father-in-law who was also at their home. When Mrs. Kaur tried to intervene, the police grabbed her by the hair and threw her in the police vehicle; they accused her of supporting the militants by cooking for them.

[16] At the station, the police stripped Mr. Mukhal and tortured him, enquiring on the whereabouts of Satwinder and the militants. The police also beat Mrs. Kaur's father and questioned him as to the whereabouts of Satwinder. Mrs. Kaur was accused of supporting the militants, cooking for them when they were at her house; she narrowly escaped being raped. The police took their fingerprints, photos, and signatures on blank papers - what Applicants' counsel refers to in argument as their biodata.

[17] The Applicants were advised by the police that when they were released, they were not to tell anyone what had happened in the police station. Once again, after two days, and with the payment of bribes and the intervention of "influential people" in the community, they were released with conditions and more threats. A doctor later treated them for their injuries.

[18] Fearful of the police and not being able to meet the conditions of their release – again it is not clear from the evidence the extent of those conditions other than having to report to the police station on a regular basis – the Applicants fled to Delhi, where they stayed with Mr. Mukhal's aunt. Their relatives there were fearful of sheltering the Applicants for an extended period of time, so in May 2016, assisted them in locating an agent who helped the Applicants travel to

Canada

. The agent undertook to send along the Applicants' children at a later date but never did. Their children remain in

India

to this day and are living with Mrs. Kaur's sister.

[19] The Applicants received their visas from the agent on July 7, 2016, and entered

Canada

with a six-month visa, valid until the end of February 2017. Once in Canada, upon the suggestion of people they met at their temple, the Applicants filed for refugee protection.

[20] The Applicants state that, in

India

, the police are still looking for them, falsely accusing them and harassing their relatives. Mrs. Kaur's parents are also living in hiding, fearing repercussions from the police in relation to her brother Satwinder.

[21] Since leaving India, the Applicants tried to lease their property, but Mr. Singh continued to harass the new tenants who eventually gave up working the land.

III. Decision Under Review

[22] The sole issue for the RAD was the availability of an IFA.

[23] The RAD concluded that the Applicants had a viable IFA in Mumbai or Delhi on the basis of the following findings:

a) According to the country condition evidence relating to

India , there is a significant Sikh community in Mumbai and

Delhi

, living without persecution;

b) As to the Applicants' allegation that once they presented their identity documents for medical treatment in Mumbai or Delhi, the Punjab police would be alerted and be able to track them, the RAD found that the evidence did not support that allegation;

c) As to the Applicants' allegation that the tenant registration system (part of the Crime and Criminal Tracking Network & System [CCTNS] whereby landlords were required to register their tenants with the local authorities) would allow the Punjab police to eventually track them, the RAD found that the police do not have the resources to identify tenants registered throughout the country, and agreed with the RPD that, rather, the evidence suggested that police tracking was aimed at individuals who are sought for serious crimes. Here, there was no evidence that the Applicants fit that profile or that they faced formal criminal charges, that there were warrants of arrest issued against them, or that they were persons of interests to the police in serious any way;

d) As to the Applicants allegation that once they arrived at the airport in India, the national police would be alerted and would advise the police in Punjab, the RAD found that although the evidence supports a finding that some information is shared amongst various police forces across India, the Applicants had not established that the Punjab police or the police outside Punjab had an interest in searching for or pursuing the Applicants. The RAD noted that, in view of the evidence pertaining to the country conditions, communications between police across states were patchy at best, and generally limited to cases of major crimes such as contraband, terrorism, or certain organized crimes, which was not the case regarding the Applicants;

e) The RAD noted that although the Applicants stated that they had failed to comply with the Punjab police's conditions of release, there was no evidence that warrants of arrest were issued against them;

f) The RAD considered the Applicants' submission that the Punjab police could track them in another state by interrogating members of their family; however, it found that since the Applicants left

India

, Mr. Singh had not targeted the siblings of either of the Applicants in an attempt to gain control of the family's land. In fact, as determined by the RPD, the Applicants claim that their parents have gone into hiding, without any explanation about who remains to assert ownership of the land;

g) As to the second branch of the IFA test, the RAD noted the Applicants' submission that the RPD had not considered their particular situation (level of schooling, their linguistic barriers, and the difficulty of integrating in Mumbai or Delhi), however found that the RPD acknowledged having "taken into account the profile of the refugee claimants in evaluating the proposed IFAs". The RAD held that there was a presumption that the RPD considered the Applicants' schooling, language, and difficulties of integration, and that the Applicants had failed to rebut that presumption;

h) In addition, the RAD noted that Mr. Mukhal had lived outside of

India

for a number of years, in different cultural environments, and worked in different areas of agriculture. The RAD found that the evidence revealed that in

India

, particularly in large cities, there are many people living modest lives, with limited education, yet making a living through various trades. The RAD found that there existed in India mechanisms and services to assist less affluent individuals, and initiatives to ensure access to healthcare for women and for older people;

i) In particular, the RAD found that individuals with similar work experience as Mr. Mukhal are able to find employment and support their families in the proposed IFAs;

j) In the end, the RAD concluded that the proposed IFAs were reasonable.

IV. Issues

[24] The only issue is whether the RAD's finding of a viable IFA was reasonable.

V. Standard of Review

[25] There is no dispute between the parties that the applicable standard of review is that of reasonableness. I agree (Okohue v Canada (Citizenship and Immigration), 2016 FC 1305 at paras 9–10; Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paras 16–17, 23–25).

VI. Analysis

[26] I should mention that the Applicants' credibility is not in issue. Neither the RPD nor the RAD questioned the veracity of the Applicants' story as to what they experienced in their village prior to coming to Canada.

[27] That said, the Decision did not provide a clear finding as to whether the Applicants would continue to be at risk in the event they returned to their village or elsewhere in Punjab. The Respondent concedes, however, that there may well continue to exist such an element of risk in the Applicants' village. However, the Decision rests primarily on the finding that, leaving that issue aside, the Applicants would not be at risk should they relocate to Mumbai or

Delhi

.

[28] The test for a viable IFA was recently set out in Olusola v

Canada

(Citizenship and Immigration), 2020 FC 799, where Mr. Justice McHaffie stated:

[7] To determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and

(2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: Thirunavukkarasu at pp 595–597; Hamdan v Canada (Immigration, Refugees and Citizenship), 2017 FC 643 at paras 10–12.

[8] Both of these "prongs" of the test must be satisfied to conclude that a refugee claimant has a viable IFA. The threshold on the second prong of the IFA test is a high one. There must be "actual and concrete evidence" of conditions that would jeopardize the applicants' lives and safety in travelling or temporarily relocating to a safe area: Ranganathan v Canada (Minister of Citizenship and Immigration), 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA) at para 15. Once the potential for an IFA is raised, the claimant bears the onus of establishing it is not viable: Thirunavukkarasu at pp 594–595.

[Emphasis added.]

A. The first branch of the IFA test - the risk of persecution and whether the Punjab police have any interest to pursue the Applicants outside Punjab

(1) Review of documentary evidence

[29] The Applicants' main submission is that the RAD rendered its decision regarding the viability of the IFAs without regard to the documentary evidence, and that there is significant evidence on the record which speaks directly to certain central issues which were either not properly considered or not considered at all by the RAD.

[30] The Applicants start with the premise that they are persons of interest to the police in

Punjab , and that they are being sought because of their involvement with Sikh militants. It is this starting premise which the Respondent contests, and which I find must ultimately fail.

[31] From the National Documentation Package [NDP] for India, the RAD cited a response to information request entitled: "Communication between police officers 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, and surveillance technology (2013-May 2016)" [Communication RIR] which stated:

[...] There is little inter-state police communication except for cases of major crimes like smuggling, terrorism, and some high profile organised crime [...]

According to information posted on the website of the Kerala Police Department, 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” (

India

n.d.a).

[Emphasis added.]

[32] As regards the implementation of the CCTNS in 2018, the RAD also cited another response to information request entitled: “India: Surveillance by state authorities; communication between police officers across the country; including use of the Crime and Criminal Tracking Network and System (CCTNS); categories of persons that may be included in police databases; tenant verification; whether police authorities across India are able to locate an individual (2016-May 2018)” [Surveillance RIR] which stated that the CCTNS has been in development since 2009, and that as of April 2017, the vast majority of police stations had been connected. However, the RAD outlined that the documentation also indicated that implementation of CCTNS is suspended, and that it may exist “only on paper”.

[33] First, the Applicants submitted before me that the RAD made an unreasonable finding that the

Punjab police do not have the capabilities or capacity to track persons of interest from region to region.

[34] I cannot agree with that submission. What the RAD did find was that the documentary evidence confirmed that inter-state police communication was available to track persons of interest outside a particular region, but that such communication mostly pertained to cases involving serious crimes such as smuggling, terrorism, and some high profile organised crime. In fact, the Applicants concede that it may be arguable “as to whether CCTNS as its present stage in light of the evidence provides the tools necessary for the police to track the Applicants outside of Punjab”.

[35] On the other hand, and quite apart from the capacity of the Punjab police to track the Applicants in the IFAs, the central issue for the RAD was whether the police would have the willingness or the interest to pursue the Applicants outside Punjab. The RAD ultimately found that the

Punjab police would not.

[36] According to the Applicants, the RAD failed to consider another document from the NDP for India entitled: “India: Situation of Sikhs outside the state of Punjab, including treatment by authorities; ability of Sikhs to relocate within India, including challenges they may encounter (2009-April 2013)” [Item 12.8]. Section 3.2 of Item 12.8, entitled: “Ability of police to track people who relocate”, states:

The interim executive director of the AHRC said that, by law, if someone is wanted for a crime, the state police are supposed to pursue them if they move to another state (AHRC 19 Apr. 2013). However, he added that the police do not “function the way that they should”; describing the policing system in India as “riddled with corruption and nepotism,” he explained that people with money and political clout can pay the police to fabricate charges against someone, including making false allegations against people who are seen as a political threat, who speak out against the leading party, speak out against impunity, or speak out in defense of human rights (ibid.). He noted that the police subject suspects to arbitrary arrests and detention, and use “torture” against detainees (ibid.). In his opinion, whether the police would pursue someone who was falsely charged to another state was “subjective” and would depend on the context of the situation (ibid.).

The VFF legal researcher similarly described the

Punjab police as “corrupt” and able to “act with impunity” (VFF 12 Apr. 2013). She claimed that if the police are suspicious of someone’s activities, they can make “false accusations” of terrorism and put the person on a list of “militants” or “high profile individuals” (ibid.). She said that targets of the

Punjab police include people who are fighting for the rights of the victims of the 1984-85 violence against Sikhs, people who criticize the police or government for their activities, and members of Sikh youth organizations (ibid.). She expressed the opinion that the

Punjab police and the intelligence service would pursue these people even if they move to another state, that they would be subject to arbitrary arrest, and that their family members would also be pursued (ibid.).

[Emphasis added.]

[37] The Applicants submit that they fled

Punjab after having been taken to the police station at the behest of Mr. Singh, tortured and falsely accused of being “militants”. The Applicants submit that Item 12.8 indicates that Sikhs fleeing Punjab under these circumstances will likely be pursued if they flee to another state, and that Item 12.8 also indicates that their family members will be pursued, corroborating the Applicants’ testimony that this too was ongoing in their village.

[38] The Applicants argue that the RAD's finding that they would not continue to face significant risk and would not be pursued outside Punjab by the Punjab police was unreasonable; although referred to by the RPD in its decision, Item 12.8 was ignored by the RAD which confined its analysis to the Communication RIR and the Surveillance RIR that only addressed inter-state communications and police surveillance in general.

[39] According to the Applicants, Item 12.8 is the only report that speaks directly to the Applicants' situation, and that if the documentary evidence is read as a whole, it must be inferred that militancy, like terrorism, will generally fall within the category of "major crimes" leading to inter-departmental pursuit. By not having addressed Item 12.8, which contradicts the finding by the RAD that the

Punjab police would have no interest to pursue the Applicants, the Decision is thus unreasonable (Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration), 1998 CanLII 8667 (FC) [Cepeda-Gutierrez]).

[40] I do not see how Item 12.8 contradicts any of the findings of the RAD. Item 12.8 states that individuals who are charged based upon false accusations may be pursued across regions by the police. There is no evidence in this case that the Applicants have ever been charged with any offence.

[41] As to their connection with their family member (Satwindar), there is also no evidence that Satwindar was ever charged. The only evidence is that Satwinder and the Applicants were "accused" of being involved with Sikh militancy during interrogation by the police. Item 12.8 does not go as far as to suggest that the Applicant's profile would be sufficient for the

Punjab police to pursue them out-of-state. Consequently, I cannot see how the RAD erred by failing to consider relevant contradictory evidence.

[42] Nor do I think the country evidence on the CCTNS network regarding communication between police stations squarely contradicts the RAD's conclusions. The RAD did accept that communication between police forces in different states in

India

does take place, although limited and confined to cases of major crime such as contraband, terrorism, or certain organized crimes. The RAD determined that the documentary evidence suggests that only persons of interest, i.e., those who have been charged with having committed the most heinous of crimes, are normally targeted and tracked across state lines.

[43] In this case however, on the basis of the evidence, the RAD concluded that the Applicants had simply not established that they were being sought by the police, nor that they were persons of interest; no charges have been laid and no warrants of arrest have been issued against them, there is no evidence that their names have been placed on any list of militants used to track down suspected Sikh terrorists, nor is there any evidence of the preparation of a First Information Report [FIF], i.e., a document, often a criminal complaint, prepared by

the police upon receiving information about the commission of a crime which, according to the Surveillance RIR, “serves to activate a police investigation of the incident” and which would allow for the type of tracking set out in the Communication RIR and Surveillance RIR.

[44] The Respondent asserts that the Applicants’ arguments are based on findings that were never made by the RAD. In short, the Respondent challenges the very basis of the Applicants’ case, to wit, that they are persons of interest for having been involved in militant activity.

[45] The Respondent asserts that the claim actually took a new spin with the Applicants’ counsel’s argument, without the necessary basis in the evidence; the idea that the reason why the Applicants were brought into the police station at the outset was to be questioned about Mrs. Kaur’s brother Satwinder is simply an inference that may – not must – be drawn from some elements of the evidence.

[46] The Respondent’s answer to the Applicants’ contention is that it is nothing short of hyperbole on their part, that there is no evidence that the Punjab police were ever truly suspicious of the Applicants, and that their entire concern comes down to a local well connected local goon (Mr. Singh) who used the police to squeeze the Applicants in order to take away their land. The police played along because, in the end, they saw that it was profitable to do so as the Applicants continued to pay the bribes demanded by the police.

[47] In addition to both the RPD and the RAD decisions, I read the transcript of the RPD hearing on December 20, 2017. I must agree with the Respondent. From the transcript, it seems clear to me that the source of the Applicants’ fear rested with Mr. Singh, the trouble he was causing in respect of the Applicants’ land, and the concern over Mrs. Kaur’s reputation in the village as a result of Mr. Singh’s unprovoked advances upon her. It was also clear that any concern regarding the local police stemmed primarily from its willingness to aid and abet Mr. Singh in his illicit dealings.

[48] When asked why he thought the local police continued to be interested in the Applicants, Mr. Mukhal responded:

[translation] The police go to see my family, then they will go so see the place where my children are. Then they say, we know that they came back. Where our ancestors are, they will go see them also, my husband's sister, they will go see them as well, then they say, we know they came back. Then they, they say no, they have not come back yet, but when they come back, we will tell you. The police say that you have kept the children, for sure you know where they are, then they say that, what do you expect us to do with the children, we cannot leave them alone.

[49] As indicated, it may well be that the Applicants would continue to be at risk of further harassment by Mr. Singh and the local corrupt police if they were to return to their village. However, the harassment from the police aside, regardless of the true reason, at no point do the Applicants say that they were ever formally charged with any major crime; the evidence is limited to accusations by the police during their rounds of harassment. That is the point which underscores the RAD's decision.

[50] The RPD later asked if the Applicants were to live in

Delhi

, what would happen. Mr. Mukhal responded:

[translation] Even if we go to Delhi, we do not know what will happen. The police might go to the airport to get information about us. Even if we can get out of the airport, to live anywhere, the will ask for ID. Then, when you provide ID, they give it to the nearest police station. Then, for sure, they will call our police station that there is [inaudible 1:10:33.3] then say that people from your area are here. That is why we cannot live there.

[51] Mr. Mukhal expressed concerns about being tracked in Delhi, either once they arrive and have to clear customs at the airport in India, or when they will have to present personal identification whenever they will require medical treatment, or seek other government services or assistance.

[52] However, that is the very issue that the RPD and RAD grappled with, and in the end, determined that the Applicants had not shown that they will be sought by the Punjab police, most probably on account of the true reason for the Punjab police's concern with the Applicants (i.e., support for Mr. Singh's illicit attempt at gaining their land and the extraction of further bribes), did not rise to the level that the documentary evidence would suggest warrant tracking and tracing outside of Punjab.

[53] As I indicated earlier, the Applicants' basic premise was that they are persons of interest to the police in

Punjab , and that they are being sought because of their involvement with Sikh militants. However the documentary evidence, including Item 12.8, suggests that the willingness of the police to track down individuals outside the state is usually limited to serious crimes, and for the individuals to be "charged" with an offence, or at least be placed on a "list of militants".

[54] During the hearing, I pressed the Applicants' counsel to address the evidence which the Applicants say exists to support their starting premise that the Applicants are considered by the Punjab police to be criminals at the level worthy of being tracked outside

Punjab . He confirmed that apart from having breached the reporting conditions to which they were made subject, the only evidence that they remain “persons of interest” to the Punjab police in the sense contemplated by the documentary evidence is to be found in the following passage of their BOC:

The police alleged that Satwinder Singh came to our house with his associates. We were telling the truth, but the police did not believe us and instead were saying that Satwinder Singh came here to meet his parents and that they got information regarding this. The police arrested me and Satwinder Singh’s father Darshan Singh, when they were taking us, my wife tried to stop them but they grabbed my wife from her hair and dragged her and threw her in the vehicle. We were taken to the police station, questioned and locked up separate (sic) cells. After some time, I was taken to a different room where they began beating me, stripped me naked and tortured me with different methods. During torture, I was questioned about Satwinder Singh, his friends and other militants. I was falsely accused of working with the militants. The police were also asking me about the activities of Satwinder Singh and his associates on Vaisakhi Day and etc. My wife and father-in-law were beaten and questioned about the same things as me. They were also falsely accused of working for the militants [...] [i]n

India

, the police are still looking for us, falsely accusing us and are harassing our relatives.

[Emphasis added.]

[55] The evidence shows that Mrs. Kaur’s brother Satwinder was accused (not charged) of being involved with Sikh militancy, was under strict reporting conditions, and later disappeared. It would be reasonable to assume that any supposed accusation against Satwinder had, as its origin, Satwinder’s defence of his sister against Mr. Singh who clearly wanted the Applicants’ land. In other words, any suggestion by the police that Satwinder was actually involved in Sikh militancy was just a ruse, concocted at the behest of Mr. Singh to justify their harassment of the family, and without any foundation as to its accuracy.

[56] The evidence as to the precise accusation made to the police by Mr. Singh against Satwinder, which then prompted the police to target Satwinder, is the following passage from the Applicants’ BOC:

After this (Mrs. Kaur’s continued harassment by Mr. Singh as part of his plan to take over their land), my wife’s brother Satwinder Singh came to her aid. He stayed with her many times and helped her [...] Gurpal Singh threatened Satwinder Singh many times, but Satwinder Singh was not afraid and would respond back in the same manner. Gurpal Singh was not happy with Satwinder Singh so he reported to the police and said that armed people visit Satwinder Singh and threaten (sic) him to kill him [...] In July 2015, the police arrested Satwinder Singh along with his friends [...] The police falsely accused Satwinder Singh and his friend of working for the militants.

[Emphasis added.]

[57] I agree with the Respondent that the evidence more accurately reflects an attempt by Mr. Singh to get rid of Satwinder, and keep him away from the Applicants' village by way of reporting conditions so as to eliminate the nuisance that Satwinder had become in Mr. Singh's efforts to intimidate Mrs. Kaur, which also played well into the interests of the police as a way of extracting bribes from the Applicants. Anything beyond that is mere speculation.

[58] This is not a case similar to Pardo Quitian v Canada (Citizenship and Immigration), 2020 FC 846, where the RPD failed to consider the principal applicant's consistent evidence that the attackers stated that they wanted to know where her brother was, and that this continued over a number of years and in different locations. The uncontradicted evidence in that case was that the principal applicant's brother was wanted by a criminal organization in Columbia because of his prior political involvement. Here there is no basis to believe that Satwinder was involved in Sikh militancy, and I have not been convinced that the Punjab police continue to be interested in Satwinder because they truly believed him to be involved in militant activity.

[59] Applicants' counsel conceded that there is no warrant of arrest in the record, no evidence that the Applicants have been formally charged with any crime, and that the concerns that arose for the Applicants derive from the concerns that are attached to Satwinder.

[60] The Applicants argue that the fact that they had their biodata taken, and were subject to reporting conditions, is equivalent to having been placed in a "list of militants" by the

Punjab police. I find that there is no support for such contention.

[61] As stated, I do not read Item 12.8 as contradicting the ultimate findings of the RAD which was not that the Punjab police do not track militants outside Punjab, but rather that the Applicants were not persons of interest, i.e., they were not wanted for major crimes such as terrorism, and thus would not be targeted by the Punjab police outside of Punjab.

[62] The issue is purely one of sufficiency of evidence. The ultimate issue for the RAD was not one of capacity (for example the state of implementation of the CCTNS), but rather one of interest, and it found that the Applicants did not provide sufficient evidence to establish such interest on the part of the Punjab police to pursue them in the IFAs.

[63] I accept that the issue of the veracity of the accusations made against the Applicants by the Punjab police may be beside the point if one is to assess the risk inherent in the Applicants returning to their village. However, the complicity of the police in the ruse is relevant to their interest to pursue the Applicants outside of Punjab. The police certainly knew the true basis of their attention towards the Applicants, so it could reasonably follow that they would not have any interest to pursue the matter in the event the Applicants did not return to their village.

[64] What is important in the end, according to the Respondent, is that the police were in on the scam, did not seriously consider the Applicants as Sikh militants, and thus had no willingness or interest in tracking them outside of

Punjab , even assuming they had the means and capacity to do so.

[65] In short, I must agree with the Respondent that there is nothing in the evidence that one would expect to see if in fact the Applicants were persons of interest involved in criminal activity, terrorism or militancy and at risk of being targeted in the IFAs, even if the Applicants themselves may subjectively believe this to be the case. The assertion by the Applicants that the

Punjab police may have been suspicious of the Applicants in insufficient to render the decision of the RAD unreasonable.

[66] As such, I conclude that there was nothing unreasonable in the RAD's finding that the Applicants had not shown that they would be sought by the Punjab police outside of

Punjab , or that they are persons of interest so as to place them at risk of continued persecution in the IFAs as set out in the documentary evidence.

(2) Security airport verification upon return to

India

[67] The RAD found that the Applicants would only undergo "routine" airport screening on return to

India , and that the Applicants had not established on the balance of probabilities that their arrival back in

India

would be disclosed "to their agents of persecution".

[68] The Applicants submit that that RAD did not cite any report in making its finding, and themselves cite a response to information request entitled: "India: Treatment by authorities of Indian citizens who are deported back to India, who return without a valid passport and/ or who are suspected of having requested refugee status while abroad (2013 May 2016)" which, they submit, shows that arrival at the airport will involve criminal screening and that this can lead to arrest, and that failed asylum seekers could face "stringent scrutiny" upon arrival:

In a telephone interview with the Research Directorate, the South Asia Director of Human Rights Watch said that “there is no problem” for failed refugee claims or other deportees to return to India, provided that they are not accused of a crime back home (Human Rights Watch 28 Apr. 2016). She explained that [a]uthorities are aware that there are people who claim refugee status for economic reasons and these people are not treated badly [...] However, if the person was wanted for a political crime or other crime in India, then they would face arrest. (ibid.)

The [Voices for Freedom] staff attorney stated that people who are deported back to

India

are “given a hard time and are interrogated for a longer time compared to others” (VFF 26 Apr. 2016). The UNHCR representative said that, based on media reports, “some returnees have been questioned in detail at Indian airports” (UN 26 Apr. 2016).

[69] The Applicants cite Vilvarajah v

Canada

(Citizenship and Immigration), 2018 FC 349, for the proposition that it is unreasonable to expect a claimant to misrepresent to border officers about their reasons for departure and return:

[15] Further, the Officer’s comment that Mr. Vilvaraja"s criminal history and his family's immigration status in

Canada

would remain unknown unless “the applicant himself told the Sri Lankan authorities”, is tantamount to inviting him to commit fraud. It is an offence in

Canada

to make misrepresentations in immigration-related matters. One of the most common places, if not the most common place, where one is confronted by immigration questions, is after returning to a country upon primary or secondary inspection at a port of entry, such as an airport.

[16] It was therefore unreasonable for the Officer to suggest that Mr. Vilvarajah ought to withhold or disguise his profile if questioned by Sri Lankan authorities. Indeed, such a suggestion to withhold or misrepresent is dangerous, given some of the evidence referenced above, as it could increase any risk for a returning failed asylum-seeker — the very outcome that a PRRA application seeks to avoid.

[70] The Applicants submit that they will be questioned at the airport about their reasons for seeking asylum in

Canada

, which will reveal that they are perceived by Indian authorities as militants. The Applicants submit that the police in Punjab will invariably be alerted to their arrival when it becomes clear that the Applicants fled persecution in that region. The Applicants submit that the RAD simply concluded that they would face “routine” scrutiny, overlooked crucial evidence, and unreasonably assumed the Applicants would not disclose their reasons for seeking asylum abroad upon questioning at the airport.

[71] First of all, apart from the vitriolic accusations to which they were subjected by the Punjab police, there is no evidence that the Applicants are “wanted for a political crime or other crime in India”.

[72] In addition, the Applicant cites Vilvarajah to suggest that applicants cannot be expected to conceal a criminal history from airport authorities. However, Vilvarajah is distinguishable because the Applicant there had criminal convictions in

Canada

for credit card infractions (Vilvarajah at para 3). Here, the Applicants are not at risk of having to conceal a formal criminal history, nor a criminal act, as they did not commit any crime.

[73] In the end, the RAD determined that:

[translation] I am of the view that the appellants have not succeeded in showing that they are being sought by the police, nor that they are persons of interest.

[74] On the basis of the evidence as a whole, I am not persuaded by the Applicants that the RAD erred in its finding that, on the balance of probabilities, the Applicant faced no serious possibility of persecution in Mumbai or Delhi.

B. The second branch of the IFA test – was the IFA reasonable?

[75] As stated earlier, once an IFA is proposed, the Applicants bear the onus of establishing it is not viable. The threshold for establishing the unreasonableness of an IFA is a high one (Cubria Juarez v Canada (Citizenship and Immigration), 2012 FC 187 at para 31; citing Ranganathan v Canada (Minister of Citizenship and Immigration), [2001] 2 FC 164 at para 14 [Ranganathan]). In addition, there must be “actual and concrete evidence” of conditions that would jeopardize the applicants’ lives and safety in travelling or temporarily relocating to a safe area (Ranganathan at para 15).

[76] The Applicants argue that the RAD erred in its assessment of the second branch of the IFA analysis, which they submit must take into account the Applicants’ personal circumstances. A similar argument was raised before the RAD in respect of the RPD decision.

[77] The Applicants cite Ramanathan v

Canada

(Minister of Citizenship & Immigration), 1998 CarswellNat 1687 (FC) [Ramanathan]:

[11] It is therefore quite clear to me that Rothstein J. in the passage in which he referred to humanitarian and compassionate considerations was not excluding them absolutely from the second branch of the IFA test. Indeed, logically it seems to me impossible to do so. A test of whether an IFA is unreasonable or unduly harsh in all the circumstances is bound to involve the consideration of some factors, at least, which will undoubtedly be the same sort of considerations that are taken into account in humanitarian and compassionate relief. I might even go so far as to say that if one were to exclude every consideration which might arguably be called humanitarian or compassionate from the second branch of the IFA test, there would be nothing left. I put the question to respondent's counsel during argument and she ventured the suggestion that what would remain would be safety considerations. But, of course, safety considerations are largely, if not entirely subsumed under the first branch of the test.

[78] The Applicants argue that the RAD failed to conduct a meaningful analysis of the hardships they will face in

Delhi or Mumbai as Sikh persons from

Punjab , who do not speak Hindi, and lack education. They argue that although the RAD cited a report indicating that there are a number of Sikhs in Mumbai and Delhi, that was not the point; rather, the issue according to the Applicants was the hardship on Sikhs relocating to Mumbai or Delhi, and the RAD failed to make the distinction in its analysis between those relocating to Mumbai and Delhi, and Sikhs who grew up in the area.

[79] The Applicants submit that Sikhs who have grown up in

Delhi or Mumbai are not in the same position as those who have been displaced from Punjab, citing Jagdeo v

Canada

(Minister of Citizenship and Immigration), 1998 CanLII 7826 (FC) [Jagdeo]:

I am satisfied that Sabaratnam, Singh and Kahlon, supra, are mere expressions of the principle that the Convention Refugee definition and the alleged IFA must be assessed in terms of their application to the applicant. One would certainly find it odd if the Refugee Division cited documentary evidence about non-Sikhs in an application for Convention Refugee status by a Sikh. Similarly, one should also be wary about generalizing from information about Sikhs who have lived outside Punjab for their whole lives and applying that evidence to a Sikh claimant fleeing from

Punjab after numerous detentions and beatings. The simple proposition is that evidence which is more relevant to the claimant's circumstances will always have greater probative value in an IFA assessment than evidence that bears lesser or little relevance. The Refugee Division must make its determination of the existence of an available IFA based on the claimant's circumstances.

[Emphasis added.]

[80] The Applicants also cite “Treatment of Sikhs outside Punjab RIR”, which states:

For her part, the legal researcher at [voices for freedom] stated that there is no law against relocating, but that it would be “very hard,” particularly for Sikh farmers, who account for the majority of Sikhs in

Punjab (12 Apr. 2013). She explained that it would be possible for Sikhs who are skilled and educated to find employment outside Punjab, but that it would be difficult for those who are unskilled and uneducated (VFF Apr. 2013). She also noted that it would be difficult for Punjab Sikhs to relocate to the southern part of the country due to language barriers (ibid.). She also said that some states – such as Rajasthan,

Himachal Pradesh ,

Jammu and Kashmir and

Maharashtra – have restrictions on people from out of state owning land (ibid.). Media sources corroborate that there are regulations limiting non-state residents from owning land in

Jammu and Kashmir

(UNI 18 Feb. 2008) and Himachal Pradesh (IANS 8 Apr. 2013). Further information about land regulations could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources note that traditional Sikhs are easily identifiable due to their beards and turbans (VFF 12 Apr. 2013; Academic 23 Apr. 2013). According to the VFF legal researcher, this poses a potential challenge for Sikhs to relocate as they are “easily recognizable during any communal riots” in states outside

Punjab (VFF 12 Apr. 2013). The UC Berkeley academic also noted that the Punjab language and the

Punjab accent in Hindi are distinctive and are other factors that make Sikhs identifiable (Academic 23 Apr. 2013).

[Emphasis added.]

[81] The Applicants submit that it was unreasonable for the RAD to conclude that the RPD is presumed to have addressed all aspects of their profile and to not conduct its own assessment. The Applicants submit that to find this would lack transparency and be unreasonable under the Dunsmuir v

New Brunswick

, 2008 SCC 9, standard.

[82] Finally, the Applicants submit that the RAD erred by failing to conduct an analysis of the impact that relocation to Delhi or Mumbai would have on the Applicants' children, and cite Abdalghader v Canada (Minister of Citizenship and Immigration), 2015 FC 581 at para 26:

The RPD also failed to assess the impact of the Applicants' Canadian minor child in its assessment of the IFA. Indeed, this Court has recognised that the separation of family members may be unreasonable (Calderon v. Canada (Minister of Citizenship & Immigration), 2010 FC 263 (F.C.) at paras 17-20). With regards to the Applicants' daughter, earlier in the decision the RPD simply stated, in its assessment of the Applicants' fear of Qaddafi regime supporters, and more specifically in its evaluation of the female Applicant's fear, that "[...] [S]ince this fear does not concern the female claimant, but rather her daughter, who was born in Canada and is not claiming refugee protection, it will not be analysed as part of their claim" (AR, RPD decision page 7 at para 30). Other than this statement, the RPD did not assess the impact of its decision on the Applicants' daughter whatsoever. The submissions of the Applicants' counsel before the RPD did not raise this argument. As mentioned above, the RPD knew of the existence of the minor child but decided not to take it into consideration for the IFA determination. In such a case, in light of the jurisprudence, the RPD should have dealt with the issue of separation for the child as it knew that it was one of the options to be considered. This is unreasonable and warrants the intervention of this Court.

[83] In particular, the Applicants argue that consideration under the second branch of the IFA test is somewhat akin to a humanitarian and compassionate [H&C] application, and that the RAD failed to consider aspects of the evidence that spoke to the hardship that would be faced by the Applicants and their children should they have to relocate.

[84] After having read the RPD decision and having listened the audio tape of the hearing, the RAD found that the RPD specifically took into account the Applicants' profile prior to finding a viable IFA in either Mumbai or

Delhi

. During the hearing, the Applicants stated that they were farmers with little schooling, that they did not speak Hindi, and that it would be difficult for them to live in a new cultural environment. In the end, the RAD agreed with the approach and finding of the RPD on this issue.

[85] I do not think the RAD's analysis was unreasonable. It was open to the RAD to find that despite cultural differences and a lack of education, these would not reach the high threshold to make Delhi or Mumbai an unreasonable IFA, especially given that the Mr. Mukhal had worked outside of Punjab for long periods of time.

[86] As to the supposed failure on the part of the RAD to make a distinction between Sikhs relocating to Mumbai and

Delhi

, and those who grew up in those cities, I conclude that both the RPD and the RAD examined the evidence appropriately. I do not read Jagdeo as imposing a duty on the RPD and the RAD to specifically make that distinction in their findings. There is nothing in the decisions of either the RPD or the RAD to suggest that they proceeded with "generalizing from information about Sikhs who have lived outside Punjab for their whole lives and applying that evidence to a Sikh claimant fleeing from Punjab after numerous detentions and beatings".

[87] As to not having considered the evidence of hardship on the part of the children, putting aside for the moment that the children are still in India and not parties to the proceedings, the argument of the specific hardship that relocating would have on the children was not raised before the RPD or the RAD. Consequently, I cannot see how the RAD was unreasonable in not addressing an issue that was not raised before it.

[88] That said, the Applicants, citing Ramanathan, invite me to look to the principles inherent in H&C applications, including consideration of the best interests of the children, in assessing the reasonableness of the RAD's decision in this context, and on its finding on this issue. Such an invitation finds no support in the case law.

[89] Ramanathan simply stands for the proposition that there may be similarities between the factors considered under the second branch of the IFA test and the hardship factors considered in an H&C application. As stated by Mr. Justice Hugessen at paragraph 11: "A test of whether an IFA is unreasonable or unduly harsh in all the circumstances is bound to involve the consideration of some factors, at least, which will undoubtedly be the same sort of considerations that are taken into account in humanitarian and compassionate relief."

[90] Ramanathan does not stand for the proposition that the principles inherent to the H&C framework, including the best interest of the child analysis, should be followed in the assessment of reasonableness when assessing the viability of an IFA.

[91] Incidentally, I note that neither the RPD nor the RAD made mention of the fact that when the Applicants left their village, they fled to relatives in

Delhi

. No issue was made of this by either party, so nothing should turn on it.

[92] In any event, I have not been convinced that the RAD's decision on the issue of the reasonableness of the proposed IFAs was itself unreasonable.

C. Was there a veiled credibility finding creating a new issue for which procedural fairness was not respected, and was there an improper requirement for corroborative evidence?

[93] The Applicants submit that the RAD raised two new issues on appeal by casting doubt on whether they were persons of interest to the police in

Punjab . The RAD's findings in questions are:

a) While landlords are required to report new tenants to the police for background checks, this would not place the Applicants at risk of being reported to police in

Punjab , and

b) That the Applicants had broken reporting conditions, but were not issued an arrest warrant.

[94] The Applicants submit that in these findings, the RAD appears to be casting doubts on whether the Applicants were, in fact, being pursued by the police in Punjab by referencing evidence not in the record (R v Mian, 2014 SCC 54; Ching v Canada (Minister of Citizenship and Immigration), 2015 FC 725; Ugbekile v Canada (Minister of Citizenship and Immigration), 2016 FC 1397; Isapourkhoramdehi v Canada (Citizenship and Immigration), 2018 FC 819).

[95] First of all, these issues were also addressed by the RPD. The finding that there was no evidence of any warrants of arrest being issued against the Applicants or that they were not on a list of wanted individuals applied not only within Punjab, but across India. As stated by the Respondent, the RPD's and RAD's findings are not limited to a geographic area. I agree.

[96] The Applicants submit that, in the alternative, if the RAD was not making a veiled credibility finding, it erred by requiring corroborative evidence. The Applicants cite Guven v

Canada

(Citizenship and Immigration), 2018 FC 38:

37 In Ndjavera v.

Canada

(Minister of Citizenship and Immigration), 2013 FC 452, [2013] F.C.J. No. 473 (F.C.) (QL) [Ndjavera], Justice Donald Rennie (as he then was) addressed the issue of the need for corroboration, noting at paras 6–7;

[6] There is no general requirement for corroboration and it would be an error to make a credibility finding based on the absence of corroborative evidence alone: Dundar v

Canada

(Citizenship and Immigration), 2007 FC 1026, paras 19–22.

[7] If there is a valid reason to question the claimant's credibility, the Board may draw a negative inference from a failure to provide corroborative evidence that would reasonably be expected. Much depends on the type of evidence at issue and whether it relates to a central aspect of the claim. Corroborative evidence is most valuable when it is independently generated by a neutral source. It may be unreasonable to expect a refugee claimant to generate or collect documentation not already available before fleeing [...]

[97] The Applicants submit that the fact that there was not an arrest warrant in the record does not contradict their testimony that they broke reporting conditions or are being pursued. However, the RAD never questioned the Applicants' assertion that they broke reporting conditions, nor that they may continue to be harassed and pursued within

Punjab , for whatever reason.

[98] What the RAD found was that the indices which one would expect to exist so as to reasonably believe that the Punjab police would have an interest to pursue the Applicants in Mumbai and

Delhi

did not exist.

[99] As I stated earlier, in issue is the sufficiency of evidence of a willingness on the part of Mr. Singh or the Punjab police to pursue the Applicants outside

Punjab . Even if the RAD had found that the Applicants subjectively believed that they would be pursued in the IFAs, it is nonetheless open to the RAD to find that the evidence simply does not support such a belief, without necessarily questioning the Applicants' credibility.

[100] Nowhere in the record do the Applicants say that they will be pursued by the police outside of

Punjab . The only evidence of continued pursuit by the police is found in their narrative:

The police were also asking me about the activities of Satwinder Singh and his associates on Vaisakhi Day and etc. My wife and father-in-law were beaten and questioned about the same things as me. They were also falsely accused of working for the militants [...] [i]n

India

, the police are still looking for us, falsely accusing us and are harassing our relatives.

[101] The Applicants are trying to extrapolate from their statement that they will continue to be pursued by the police outside of Punjab, and support that theory on the basis of the documentary evidence that suggests that individuals in India are often falsely accused of militancy, and that police in Punjab have the means and capacity to pursue such individuals outside of the State.

[102] The strength of that theory is nonetheless predicated on the RAD finding that the documentary evidence supports the Applicants' contention. A finding on this issue neither impairs nor improperly adds a requirement of corroboration in relation to credibility.

[103] The RAD found that the documentary evidence did not support the theory advanced by the Applicants as to whether they would continue to be pursued outside

Punjab . Under the circumstances, I see nothing unreasonable with the RAD's findings on this issue.

VII. Conclusion

[104] As a result, I have not been convinced that the decision of the RAD was unreasonable, and therefore, the application for judicial review must be dismissed.

JUDGMENT in IMM-6716-19

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

There are no questions for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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