CANADA / JUDGMENT

Sunil v. Canada (Citizenship and Immigration)

2025 FC 1932

COURT
Federal Court

DECIDED
5 December 2025

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Sunil v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2025-12-05 Neutral citation 2025 FC 1932 File numbers IMM-1449-25 Decision Content Date: 20251205 Docket: IMM-1449-25 Citation: 2025 FC 1932 Ottawa, Ontario, December 5, 2025 PRESENT: The Honourable Madam Justice Aylen BETWEEN: AKKIN SUNIL Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS

[1] The Applicant, a citizen of India, made a claim for refugee protection based on his fear of persecution at the hands of the political opposition organizations Bharatiya Janata Party [BJP] and the Rashtriya Swayamsevak Sangh [RSS], as the Applicant alleged he and his family had been targeted due to his mother being an active member of the Communist Party of India (Marxist) [CPM] and his family's political affiliations.

[2] The Applicant claimed that, in 2016, his mother was assaulted while working at a CPM party office and the Applicant and his mother were threatened. The Applicant asserts that the agents of harm had also barged into the family home and vandalized it. The Applicant asserts that, in a separate incident, he was kidnapped while returning home and held overnight until his parents paid a ransom. The Applicant claims that when he attempted to report the kidnapping to the police, the agents of harm arrived at the police station and assaulted him again, then ransacked the Applicant's parents' home (again) as well as his father's place of business. He further claims that, in 2017, the agents of harm continued to hassle the Applicant's parents by forcing his father to stop sending the Applicant money for his education. However, by the time the Applicant made his refugee claim, he did confirm that the pursuit of his family by the agents of harm had ceased.

[3] The Refugee Protection Division [RPD] found that the Applicant was not a Convention refugee nor person in need of protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA], as the Applicant had a viable internal flight alternative [IFA]. By decision dated November 29, 2024, the Refugee Appeal Division [RAD] confirmed the decision of the RPD.

[4] The Applicant asserts that the RAD's decision is unreasonable on the basis that the RAD: (a) erred in its assessment of the first prong of the IFA test by failing to properly consider the evidence regarding the motivation and means of the agents of harm to pursue the Applicant in the proposed IFA location; (b) erred in its assessment of the country conditions of India, particularly with respect to the treatment of political opponents and failed asylum seekers; and (c) failed to properly consider the Applicant's evidence and submissions regarding the risk of persecution from the agents of harm in the proposed IFA.

[5] The parties agree, and I concur, that the applicable standard of review is that of reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see Mason v Canada (Citizenship and Immigration), 2023 SCC 21 at paras 8, 59]. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see Adeniji-Adele v Canada (Citizenship and Immigration), 2020 FC 418 at para 11].

[6] The test to determine whether a proposed IFA is viable is two-pronged: the RAD must be satisfied, on a balance of probabilities, that (i) an applicant will not be subject to a serious possibility of persecution nor to a risk of harm under sections 96 and 97(1) of the IRPA in the proposed IFA location; and (ii) it would not be objectively unreasonable for them to seek refuge there, taking into account the circumstances particular to the Applicant [see Thirunavukkarasu v Canada (Minister of Employment and Immigration) (CA), [1994] 1 FC 589 at 593–597]. Both prongs must be satisfied in order to make a finding that an applicant has a viable IFA [see Bassi v Canada (Citizenship and Immigration), 2024 FC 910 at para 16, citing Thirunavukkarasu, supra at 597–598].

[7] On the first prong of the test, a claimant bears the onus of demonstrating that the proposed IFA is unreasonable because they fear a possibility of persecution throughout their entire country. In order to discharge their burden, the claimant must demonstrate that they will remain at risk in the proposed IFA from the same individual or agents of persecution that originally put them at risk. In such cases, the risk assessment considers whether the agents of persecution have both the "means" and "motivation" to cause harm to the claimant in the proposed IFA [see Chatrath v Canada (Citizenship and Immigration), 2024 FC 958 at para 20, citing Singh v Canada (Citizenship and Immigration), 2023 FC 996 at para 8].

[8] This assessment is a prospective analysis and is considered from the perspective of the agents of persecution, not from the perspective of the claimant [see Vartia v Canada (Citizenship and Immigration), 2023 FC 1426 at para 29, citing Adeleye v Canada (Citizenship and Immigration), 2022 FC 81 at para 21; see also Aragon Caicedo v Canada (Citizenship and Immigration), 2023 FC 485 at para 12]. The onus is therefore on an applicant to adduce

sufficient evidence or facts to discharge their burden of proof and demonstrate, on a balance of probabilities, that the agents of persecution have the means and motivation to locate them in the proposed IFA [see Chatrath, supra at para 20].

[9] On the first prong of the IFA test, the RAD found that the Applicant was not subject to any serious possibility of persecution or likely risk of harm in the proposed IFA location on any of the three grounds raised by the Applicant to the contrary.

[10] First, the RAD rejected the Applicant's argument that he would not be safe as a failed asylum seeker. The RAD dismissed the Applicant's interpretation of a Response to Information Request [RIR] report issued by the RAD, which the Applicant asserted demonstrated that returnees — particularly those associated with political dissent — face a significant risk of arrest, harassment and potential harm upon return to India. Rather, the RAD found that the RIR report indicates that Indian nationals who return after having their asylum applications rejected abroad do not have problems if they return with valid travel documents, including temporary travel documents. The RAD noted that there was no evidence to support the Applicant's assertion that immigration officers would seize his passport and question him on his stay in Canada. Moreover, the RAD noted that even if Indian immigration officials were to conclude the Applicant did apply for refugee protection while in Canada, the Human Rights Watch's South Asia Director has expressly stated that immigration officials "are aware that there are people who claim refugee status for economic reasons and these people are not treated badly."

[11] The Applicant asserts that the RAD failed to properly consider the evidence that failed asylum seekers (particularly those associated with political dissent) face a significant risk of arrest, harassment and harm upon their return to India, which was supported by the RIR cited by the RAD. The Applicant further asserts that the RAD failed to consider the evidence that the agents of harm have a history of targeting political opponents, particular those associated with the CPM, and continue to do so. I find that there is no merit to these assertions. The RAD properly considered the country condition evidence before them and did not misconstrue nor ignore any portion thereof. It is of note that the Applicant has not pointed to any particular portion of the RIR that he asserts was misconstrued.

[12] Second, the RAD rejected the Applicant's argument that he would not be safe as he is at risk from the police. The RAD noted that the Applicant had not alleged nor established that he has previously been, or is currently, sought by the police. The RAD found that the fact the police had never used official police tools at their disposal to pursue the Applicant nor had they issued a First Information Report [FIR] nor have they charged him with any crime at all, significantly weighed against concluding that there remains a official police interest in the Applicant. As such, the RAD found that the police would not be motivated to pursue the Applicant in the proposed IFA location.

[13] The Applicant asserts that the RAD failed to consider evidence of widespread police corruption and police complicity with the agents of harm. The Applicant claims that the absence of an FIR or an arrest warrant issued against him does not preclude the possibility that he is at risk from the police. I find that there is no merit to this argument. While police corruption may generally exist in India and police authorities would have available the tools to locate the Applicant (even in the absence of an FIR or arrest warrant), the RAD's decision turned on the motivation —not means — of the agents of harm to locate him in the proposed IFA.

[14] Third, the RAD rejected the Applicant's argument that he would be sought by the agents of harm in the proposed IFA location, finding that the agents of harm lacked sufficient motivation to pursue him. The RAD rejected the Applicant's argument that the agents of harm do not differentiate between parents and their children (noting that there was no evidence to substantiate this assertion) but noted that, even if it were true, the fact that the Applicant's parents have had no issues with the agents of harm for the last six years supports the conclusion that the agents of harm are not motivated to pursue the Applicant should he return to India.

[15] The RAD noted the Applicant testified that his father's friends informed him that the Applicant's photograph was being shared on social media and WhatsApp groups by the agents of harm, along with a "lookout circular" — both of which would cause the Applicant to be detained upon landing in India. The RAD assigned this evidence minimal weight, noting that the testimony was speculative, based on hearsay, did not benefit from the presumption of truth and was not contained in the Applicant's Basis of Claim narrative.

[16] The Applicant asserts that the RAD failed to consider the evidence that the agents of harm have a nationwide network and the ability to track individuals across India, particularly individuals associated with political opposition parties. However, this is an argument directed at the means of the agents of harm and not their motivation to pursue the Applicant in the proposed IFA. The RAD accepted that the agents of harm had the means to pursue an individual throughout India where they are motivated to do so, and that the agents of harm do target political opponents, but the determinative aspect of the RAD's decision was its finding that the agents of harm specifically lacked the motivation required to pursue the Applicant taking into account his particular circumstances.

[17] The Applicant further asserts that the RAD improperly focused on the fact that the Applicant's parents had not been pursued over the past six years and that the RAD ignored evidence that the Applicant himself had been specifically targeted in 2016 and indirectly, through pressure on his parents to cease his financial support, in 2017. It is obvious from a reading of the RAD's decision that the RAD did not ignore the events involving the Applicant, nor can the RAD be faulted for considering the agents of harm's lack of interest in the Applicant's family over the last six years, particularly given that their interest in the Applicant is anchored by the activities of his mother. Given that the Applicant had argued before the RAD that the agents of harm do not distinguish between parents and children, the

lack of interest in the Applicant's parents in recent years is certainly worthy of the RAD's consideration and focus.

[18] The Applicant further asserts that the RAD failed to provide a reasonable explanation for why it was dismissing the "lookout circular" and that it failed to properly consider the Applicant's evidence regarding the circulation of his photograph on social media and WhatsApp groups. However, I see no error in the RAD's consideration of this evidence or any lack of justification for its treatment thereof.

[19] At the hearing of this matter, the Applicant asserted that he had been denied procedural fairness before the RPD in that he lacked proper guidance from his immigration consultant and that the RAD failed to adequately consider this procedural deficiency. However, a review of the Applicant's submissions before the RAD show that the Applicant did not raise this argument on appeal. As such, the RAD cannot be criticized for failing to address it. In any event, the Applicant's allegation is nothing more than a bald assertion lacking particulars regarding the alleged lack of guidance and makes no reference to any evidence in support thereof.

[20] The Applicant also asserted that the RAD's credibility findings were flawed as they were overly reliant on minor inconsistencies while disregarding the Applicant's core assertions. However, the RAD made no credibility findings in their decision and when, pressed at the hearing, Applicant's counsel was unable to point the Court to any such findings.

[21] The Applicant has not asserted that the RAD made any errors in relation to the second prong of the IFA test and, as such, I need not consider this aspect of the RAD's decision.

[22] As the Applicant has failed to demonstrate that the RAD's decision was unreasonable, the application for judicial review shall be dismissed.

[23] Neither party raised a question for certification and I agree that none arises. JUDGMENT in IMM-1449-25 THIS COURT'S JUDGMENT is that: The application for judicial review is dismissed. The parties proposed no question for certification and none arises. "Mandy Aylen" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-1449-25 STYLE OF CAUSE: AKKIN SUNIL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: TORONTO, ONTARIO DATE OF HEARING: DECEMBER 2, 2025 JUDGMENT AND REASONS: AYLEN J. DATED: December 5, 2025 APPEARANCES: Poorna Prasath Sikkandar For The Applicant Stephen Jarvis For The Respondent SOLICITORS OF RECORD: Goldengate Barristers and Solicitors Professional Corp. Barristers and Solicitors Niagara Falls, Ontario For The Applicant Attorney General of Canada Toronto, Ontario For The Respondent

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Prepared on 29 October 2026 · Esheria