



Immigration and
Refugee Board of Canada
Refugee Protection
Division

Commission de l'immigration
et du statut de réfugié du Canada
Section de la protection
des réfugiés

RPD File: XXXXXX

NOTICE OF DECISION

[*Immigration and Refugee Protection Act*, subsection 107(1)]
[*Refugee Protection Division Rules*, rule 67]

Alexandra Mann

Member

In the claim for refugee protection of:

Date of birth:

UCI:

XXXXXX

XXXXXX

XXXXXX

The claim was heard on May 18, 2023.

The Refugee Protection Division determines that **the claimant is a Convention refugee and therefore accepts the claim.**

The reasons for the decision are attached.


June 5, 2023

CMQ, Registry Officer

For the Registrar

Tel: 1-866-787-7472

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IRB Representative
Représentant de la CISR



RPD File / Dossier de la SPR : XXXXXX
UCI / IUC: XXXXXX

Private Proceeding / Huis Clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXXXX	Demandeur(e)(s) d'asile
Date(s) of hearing	May 18, 2023	Date(s) de l'audience
Place of hearing	Heard by Virtual Hearing	Lieu de l'audience
Date of decision and reasons	May 30, 2023	Date de la décision et des motifs
Panel	Alexandra Mann	Tribunal
Counsel for the claimant(s)	Simrit Birdi	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated representative	N/A	Représentant(e) désigné(e)
Counsel for the Minister	N/A	Conseil du (de la) ministre

AAV

IRB Representative
Représentant de la CISR

REASONS FOR DECISION

INTRODUCTION

[1] This is the decision of the Refugee Protection Division (RPD) in the claim of XXXXXX a citizen of India who is claiming refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (the “Act”).¹

ALLEGATIONS

[2] The claimant is an Indian national of the Sikh faith from the state of Punjab, India. The claimant fears persecution from the Indian authorities and members of the ruling Bharatiya Janata Party (BJP) due to his membership in the Shiromani Akal Dal (Amritsar) (SAD(A)) party, a Punjab-based political party that advocates for the creation of an independent Sikh state known as Khalistan, as well as his pro-Khalistan stance.

DETERMINATION

[3] I find that the claimant is a Convention refugee under section 96 of the *Act*.

ANALYSIS

Identity

[4] I find that the claimant’s identity has been established on a balance of probabilities by his testimony and the copy of his Indian passport in evidence.²

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit 1.

Credibility and Findings of Fact

[5] When a claimant swears to the truth of their allegations, this creates a presumption that those allegations are true, unless there is sufficient reason to doubt their truthfulness. In the present case, the claimant provided genuine testimony about his membership in the SAD party. The claimant testified that he decided to join the SAD party in 2010 because he was persuaded by members of his Gurdwara who preached about the 1984 Sikh massacre. The claimant testified that as a SAD member, he participated in fundraising and attended SAD gatherings where he listened to speeches about the Indian government's human rights abuses against the Sikh community. The claimant testified that he continues to support Khalistan as he believes that India prioritizes the rights of Hindus, and that Sikhs require their own government to guarantee their rights.

[6] I note that the claimant did not seek to exaggerate his level of involvement in the SAD party, which I find enhanced his general credibility. The claimant also disclosed documentary evidence which corroborated his SAD membership, including a copy of his SAD membership card and a letter from the SAD confirming that the claimant has been a member of the party since 2010.

[7] The claimant also provided genuine testimony about mistreatment he faced from BJP members in his home community prior to his departure from India. In particular, the claimant testified with emotion about an incident in which BJP members attacked the claimant and his parents at their home. The claimant testified that in this attack, BJP members tore off the claimant's turban and cut his hair. The claimant's testimony regarding this incident was corroborated by an affidavit from the claimant's father.

[8] Based on the claimant's credible testimony and the corroborative documentary evidence, I find on a balance of probabilities that the claimant is a genuine member of the SAD party who supports the establishment of Khalistan. I also accept that the claimant has been violently assaulted by BJP members in his community.

Nexus

[9] The claimant fears persecution from the Indian authorities and the ruling BJP on account of his SAD membership and pro-Khalistan stance, which has a nexus to the Convention ground of political opinion. I have therefore assessed this claim under section 96 of the *Act*.

Subjective Fear

[10] With respect to the claimant's subjective fear, I note that before coming to Canada, the claimant resided in the United Kingdom (UK) from 2013 until he travelled to Canada in September 2022. The claimant testified that he fled to the UK in 2013 as he had been targeted and violently attacked by members of the BJP. The claimant testified that he did not make a refugee claim in the UK because he was advised by members of the Sikh community that he would be required to live in the UK for twenty years before he could qualify for protection. Acting on this advice, the claimant decided to remain in the UK without status until he qualified for protection. The claimant testified that in 2022, he learned about the option of seeking protection in Canada. The claimant explained that life as an undocumented person in the UK was very difficult for him, so he decided to pursue protection in Canada instead. In September 2022, the claimant travelled to Canada via the United States (US) and initiated a claim for protection.

[11] I find that the claimant's testimony regarding these matters was genuine and credible. While the claimant may have been mistaken about the requirements to seek protection in the UK, I accept that he held a genuine belief that he could not make a refugee claim unless he had been in the country for twenty years. I therefore do not draw a negative inference from the claimant's failure to claim in the UK. I also note that the claimant travelled to Canada via the US. However, in *Gavryushenko v. Canada*, the Federal Court endorsed Professor Hathaway's statement in *The Law of Refugee Status* that: "(t)here is no requirement in the Convention that a refugee seek protection in the country nearest her home, or even in the first state to which she flees. Nor is it requisite that a claimant travel directly from her country of first asylum to the state in which she intends to seek durable protection."³ Applying this principle, the Court held that "(t)he fact that a

³ Prof. Hathaway in *The Law of Refugee Status* (Toronto, Butterworths, 1991) at p. 46.

person does not seize the first opportunity of claiming refugee status in a signatory country may be a relevant factor in assessing his or her credibility, but it does not thereby constitute a waiver of his or her right to claim that status in another country.”⁴ Following this case law, given that the claimant left the UK with Canada as his destination, I do not draw a negative inference from his decision not to make a refugee claim in the US. In summary, while the claimant may have been able to seek protection in the UK or the US, I find that his decision not to seek protection in these countries is insufficient to rebut the presumption of truthfulness or to undermine his subjective fear of persecution.

[12] Given the claimant’s credible testimony and his action in seeking protection in Canada, I find on a balance of probabilities that the claimant has established a genuine subjective fear of persecution.

Well-Founded Fear of Persecution or Risk of Harm

[13] The next question for me to consider is whether the claimant’s fear of persecution is objectively well-founded.

[14] As stated above, I find on a balance of probabilities that the claimant is a genuine SAD member and Khalistan supporter. According to the objective evidence in the National Documentation Package (NDP), Sikhs who advocate for an independent Khalistan may attract the attention of the Indian authorities and be subject persecutory treatment including harassment by police and intelligence agencies or being falsely implicated in criminal charges.⁵ Those who are arrested and detained face harsh prison conditions including torture.⁶

[15] Sources further state that individuals can be targeted based on very little evidence. For example, in February 2019, three Sikh youths were sentenced to life imprisonment in Punjab for

⁴ *Gavryushenko v. Canada (M.C.I.)*, 2000 CanLII 15798 (FC).

⁵ Exhibit 3, National Documentation Package (NDP) for India, June 30 2022 Version, Item 12.8.

⁶ Exhibit 3, NDP for India, Item 2.1.

merely possessing pro-Khalistan literature. Putting up pro-Khalistan posters and hoisting the Khalistan flag are also considered illegal acts that provide grounds for arrest.⁷

[16] Other sources report that spending time abroad can elevate an individual's risk of persecution as the Indian authorities suspect Sikh youths of being radicalized by Khalistani groups based overseas in countries such as England and Canada.⁸

[17] The country condition evidence further indicates that the persecution of suspected Khalistan supporters takes place, not only in Punjab, but throughout India. One source cited in a recent IRB Response to Information Request (RIR) reports that "suspected supporters of Khalistan are not safe outside of Punjab, anywhere in India". Other sources cited in the same RIR report that if an individual becomes known as a Khalistan supporter outside of Punjab, they may be monitored by the authorities or face violence from local people who are hostile towards Sikhs and oppose the Khalistan movement. The RIR also provides several examples of pro-Khalistan suspects who were traced by the authorities after relocating from Punjab to other areas of India, including Delhi and Bengaluru.⁹

[18] Given my finding that the claimant is a genuine Khalistan supporter, and the objective evidence that the Indian authorities subject suspected Khalistan supporters to harassment, monitoring, arbitrary arrest, detention and abuse, I find that in a return to India, the claimant would face a serious possibility of persecution.

State Protection

[19] The next question for me to consider is whether the claimant would have access to state protection in India. While there is a presumption that states are capable of protecting their citizens, this presumption is rebuttable. Given the objective evidence that the Indian state

⁷ Exhibit 3, NDP for India, Item 12.8.

⁸ Exhibit 3, NDP for India, Item 4.9.

⁹ Exhibit 3, NDP for India, Item 12.8.

persecutes Khalistan supporters, I find that it would not be reasonable to expect the claimant to approach the Indian authorities for protection as doing so would likely place him at risk of persecution. I therefore find that the presumption of state protection has been rebutted in this case.

Internal Flight Alternative

[20] The final question for me to consider is whether the claimant has a viable internal flight alternative (IFA). In assessing the availability of an IFA, the following two-prong test applies:

1. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subject 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.
2. Moreover, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claimant, for him to seek refuge there.¹⁰

[21] Both prongs must be satisfied to find that a claimant has a viable IFA to escape the harm that they fear and, as with establishing the claim more generally, the burden in establishing a lack of an IFA lies with the claimant.¹¹

[22] As stated above, the country condition documents indicate that those who are suspected of supporting Khalistan face persecution throughout India. Consequently, I find that there is no location in India where the claimant would not face a serious possibility of persecution. As such, I find that the claimant does not have an IFA.

¹⁰ *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.).

¹¹ *Zablon v Canada (Minister of Citizenship and Immigration)*, 2013 FC 58 at para 20.

CONCLUSION

[23] For these reasons, I find that the claimant is a Convention refugee and I accept his claim.

(signed) Alexandra Mann

May 30, 2023

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IRB Representative
Représentant de la CISR