



RPD File: XXXXXX

NOTICE OF DECISION

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

Delano Fullerton
Member

In the claim for refugee protection of:

Date of birth:

UCI:

XXXXXX

XXXXXX

XXXXXX

The claim was heard on March 8, 2024.

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

The reasons for the decision are attached.

March 18, 2024

CMQ, Registry Officer
For the Registrar
Tel: 1-866-787-7472

**Certified True Copy
Copie Conforme**

IRB Representative
Représentant de la CISR



Refugee Protection Division

Section de la protection des réfugiés

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

Private Proceeding / Huis clos

TRANSCRIPT OF THE REASONS AND DECISION

Claimant(s)	XXXXXX	Demandeur(e)s d'asile
Date of hearing	March 8, 2024	Date de l'audience
Place of hearing	Heard by Virtual Hearing	Lieu de l'audience
Date of decision and reasons	March 8, 2024	Date de la décision et des motifs
Panel	Delano Fullerton	Tribunal
Counsel(s) 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
Interpreter	Jameel Asghar	Interprète

DECISION

5 **MEMBER:** This is the decision of the *Refugee Protection Division* in the claim of XXXXXX, who is a citizen of India and is claiming refugee protection, pursuant to 96 and 97(1) of the *Immigration and Refugee Protection Act*. I have considered your testimony and the other evidence in the case, and I am ready to render my decision orally.

DETERMINATION

10 I find that you are a Convention refugee, pursuant to section 96 of the IRPA, as you have established a serious possibility of persecution for the following reasons.

ALLEGATIONS

15 The detailed allegations that you have put forward can be found in your Basis of Claim form and narrative. The following is a summary of those allegations. In India, on 3 April 2019, you joined the Simran Mann Akali Dal (Amritsar) party, and commenced actively working for the party, as you helped by preparing the stages for party programmes. While you were walking home from a party meeting on 15 November 2019, you were attacked by five (5) men with a sharp weapon, who told you to leave the Akali Dal party and join the BJP party. They threatened to kill you and left you unconscious.

20 People in the area recognized you, took you home, and your family took you to the local doctor. Your father reported the incident to the local police, who refused to take a complaint, and who said that you should leave the Simran Mann Akali Dal party. After approximately three (3) months, you were sufficiently healed to start working for the party again, and a few days after doing so, the police detained you, beat you, and told you to leave the party. After requesting a bribe and receiving one (1) from your father, they took your fingerprints and let you go.

25 Thereafter, in June of 2020, you left your village and went and lived in your sister-in-law's village of Khojkipur, where you stayed for a year. Despite your absence, the police continued harassing your family and extorting money from them. You returned to your village on 13 July 2021, and the next morning, the police came and picked you up, detaining you for the night, and allowing you to leave only the next day after your father attended with the sarpanch and paid a bribe. After being detained again, you started to live in different places with different relatives. However, the police continued to harass your family. Your family were scared for your safety and advised you to leave the country. On 23 May 2020, you left for the United States, where you stayed for just over a month before coming to Canada to make a refugee claim.

30 You fear returning to India, and specifically, both the BJP party and the Punjab Police. And you say that there is no state protection available for you in India, and that you will not be able to live safely anywhere in your country.

35 **Identity**

40 Your personal identity and identity as a national of India has been established, on a balance of probabilities, by your testimony and a copy of your Indian passport held on file.

Nexus

45 For a claimant to be considered a Convention refugee, the well-founded fear of persecution must be by reason of one (1) or more of the five (5) grounds, race, religion, nationality, membership in a particular social group, or political opinion. I find that your allegations establish a nexus to the Convention, political opinion, and that your political activities combined with your religion, give rise to further, perhaps imputed, political opinions in respect of Sikh independence and a separate Khalistan state. I find that you have

established a nexus to a Convention ground, and as such, I have assessed your claim under section 96 of IRPA.

Credibility and Well-Founded Fear

5 When a claimant swears to the truth of their allegations, this creates a presumption that those allegations are true unless there are reasons to doubt their truthfulness. In terms of your general credibility, I have found you to be a credible witness. You have provided consistent testimony about the events that have given rise to your claim here today, and your testimony has been internally consistent and consistent with the information provided in your BOC and your narrative. You have spoken with some emotion, and with detail, and with evident concern for your safety and the situation that you face.

10 In support of your testimony, you have filed considerable documentary evidence. Some of the most pertinent of which includes affidavits from your wife, your father, your sister-in-law, your neighbour Harjinder (ph) Singh, as well as the district collector of the village, Virk (ph), and a committee member from Gurdwara 108, all speaking to their personal knowledge of your circumstances in India and corroborating virtually all of the relevant aspects of your testimony. You have also filed a letter of support from the office of the president of the Shiromani Akali Dal (Amritsar), which speaks both to your personal situation and to the broader situation of Sikhs in India, and the goals of the movement.

15 You also filed a letter from Kulwinder Singh Grewal (ph), the manager of the company for which you work in Abbotsford, British Columbia, who has some knowledge of your beliefs and activities on behalf of the Khalistan movement and for Sikhs here in Canada. You also filed photographs of your attendance at a rally in support of Khalistan. I have no reason to doubt the veracity of these documents, and I give them full weight. I therefore find that your subjective fear is established by your credible testimony, and I believe that you -- what you have alleged, on a balance of probabilities.

20 I also find that there is an objective basis for what you fear in India. Given your active involvement with Akali Dal in India and your support of an independent Khalistan while here in Canada, the country condition documents support your fears of returning to India. NDP 2.1 of the 30 November 2023 package reports that police abuse is a major human rights concern in India. The US Department of State report refers to extrajudicial killings, torture, arbitrary arrest, and detention by police, as well as widespread corruption and impunity. NDP 12.8 at page 13 says that, and I quote with references omitted, "In correspondence with the Research Directorate, sent on 12th May 2022, the World Sikh Organization representative stated that the government, civil society, and media vilify Sikhs advocating for Khalistan as extremists and militants by default. An emeritus professor noted that the government is hostile to separatist movements."

30 NDP 12.8 goes on to say that, again quoting without references, "The police keep track of or monitor Khalistan supporters. Security services are more likely to focus on Sikh separatists because they represent a perceived political threat to the unity of India, and individuals who attend SAD(A) speeches will be tracked by the police and Khalistan activists who participate in activities such as demonstrations, meetings or postings on social media will be monitored. The same source further stated that individuals who moved to another city will continue to be tracked, since that information will be shared. And the World Sikh Organization representative noted that Khalistan activists are tracked through social media, with police and intelligence forces having both vast and sophisticated IT cells, which devote considerable resources to tracking Khalistan supporters."

40 NDP 12.8 also says that, again quoting without references, "Intelligence and law enforcement agencies, including those in Punjab, are controlled by the central government, which views Khalistan supporters very suspiciously. And the police will not say that they have arrested someone for supporting Khalistan, rather

5 that the arrest is attributed to illegal activities or supporting militants, such as putting up pro Khalistan posters, having weapons, or providing shelter to militants. The police will blame Khalistan activists for crimes in which they cannot find the perpetrator. Similarly, the World Sikh Organization representative stated that perceived Khalistan supporters are often implicated in false cases, and police forces harass Khalistan activists and their families and friends."

10 NDP 12.8 says that there are no widespread or systematic mistreatment of Sikhs in India, but that Sikhs who are suspected of being militant supporters are subject to monitoring, and sometimes detention and torture.

15 Based on the totality of the evidence before me, I find that you have established a well-rounded fear of persecution, based on your visible membership in Simran Mann Akali Dal (Amritsar) party while in India and your public support of Khalistan in Canada. Moreover, I am satisfied that you would continue your activism, given your long-standing involvement in India, your active engagement in Canada, and your stated beliefs. This places you at risk of persecution for reasons of your political beliefs. I therefore find that you have a well-founded fear of persecution.

State Protection

20 There is a presumption of state protection unless the country is in a state of complete breakdown. This can be rebutted with clear and convincing evidence that protection would not be reasonably forthcoming or available to you. I find that it would be objectively unreasonable for you to seek the protection of the state in light of your particular circumstances and given that state authorities are the agent of persecution. I therefore find that there is no operationally effective state protection available to you, that the presumption of state protection has been rebutted in your particular circumstances, and based on country condition documents, there is no adequate state protection for you in your country.

IFA

30 I have also considered whether a viable internal flight alternative exists for you. At the commencement of the hearing, I raised the issue of IFA with you, and I suggested possible IFAs of Mumbai or Kolkata. For a location to be a viable internal flight alternative, it must be a location where two (2) factors are, on a balance of probabilities, met. Firstly, that there must be no serious possibility of persecution, or risk to life, or risk of cruel and unusual treatment or punishment, or a danger of torture in that location. Secondly, the location must be one (1) in which it is, in all the circumstances, objectively reasonable for you to live.

35 In this respect, I note that the objective evidence at NDP 12.8 says that Sikhs with separatist beliefs living outside of Punjab would have negative interactions in education and employment, would be monitored by the authorities, and would find it more difficult to live outside of Punjab. And that the requirements that have made the relocation of Sikhs facing persecution more challenging, include registration at police stations when moving, use of the Aadhaar card for basic services, such as banking and tenant verification. 40 It also says that if an individual is outside of Punjab and their support of Khalistan becomes known, there is little doubt that they would face discrimination, harassment, or worse, and that society outside of Punjab is more hostile to Sikhs in general, and that if the beliefs of a Khalistan activist outside of Punjab were to become known, they would be in danger of violence from local people.

45 On the evidence before me, I find that there is no IFA that exists for you in your country. I find that there is a serious possibility of persecution for you throughout India. This is also because Indian authorities respond to calls for Khalistan with a heavy hand. The Indian government is in control of the entire territory of the country, and the treatment meted out to perceived and actual supporters of Khalistan separatists is uniform across the country. Therefore, I find that you will face a serious possibility of persecution

throughout India, and that you do not have a viable internal flight alternative in your country.

CONCLUSION

For the foregoing reasons, and based on the totality of the evidence, which includes your Basis of Claim form, your narrative, your documentary evidence, and the numerous letters, your testimony, and indeed, the objective evidence before me, I find that you are a Convention refugee under section 96. Therefore, I accept your claim.

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~~-----REASONS CONCLUDED-----~~

I HEREBY DECLARE THAT THIS IS A TRUE
TRANSCRIPT OF THE RECORDING AND THAT I HAVE
SWORN THE OATH OF SECRECY

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Dorothy Yu, Transcriptionist
For eDecree
March 15, 2024

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**Certified True Copy
Copie Conforme**

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IRB Representative
Représentant de la CISF