



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]

XXXXXX

Member

In the claim for refugee protection of:

Date of birth:

UCI:

XXXXXX

XXXXXX

XXXXXX

The claim was heard on June 7, 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.

June 21, 2024

RAR, Registry Officer
For the Registrar
Tel: 1-866-790-0581





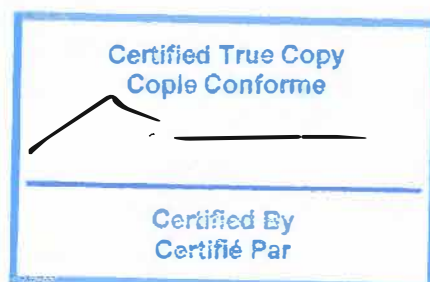
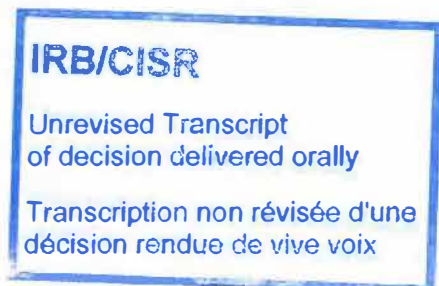
RPD File / Dossier de la SPR : XXXXXX

UCI / IUC : XXXXXX

Private Proceeding / Huis clos

TRANSCRIPT OF THE REASONS AND DECISION

Claimant(s)	XXXXXX	Demandeur(e)(s) d'asile
Date of hearing	June 7, 2024	Date de l'audience
Place of hearing	Heard by Virtual Hearing	Lieu de l'audience
Date of decision and reasons	June 7, 2024	Date de la décision et des motifs
Panel	XXXXXX	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	XXXXXX	Interprète



DECISION

5 **MEMBER:** This is the decision for XXXXXX, the claimant, who alleges that he is a citizen of India, and he claims protection pursuant to section 96 and 97(1) of the *Immigration and Refugee Protection Act*. The details of the claimant's allegations are set out in his Basis of Claim form narrative which can be found at Exhibit 2 under the list of documents.

10 In short, the claimant alleges that he fears persecution by authorities in India and by extremists in India because of his support for an independent Khalistan. The claimant alleges that he supported an independent Khalistan since 2013 by making posts on social media. He alleges that he faced violence in 2015 and 2016 and threats from extremist members of the BJP and RSS due to his social media posts which caused the claimant to go into hiding and to leave India in 2017.

15 The claimant alleges that he entered Canada as a student in 2017 with the dual intent of studying in Canada and working towards becoming a permanent resident of Canada. The claimant alleges that in 2022, he learned about the protection process in Canada and initiated a claim for protection soon after.

20 The panel finds that the claimant is a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*. The claimant has established his personal identity and his national identity on a balance of probabilities. The Minister provided a true certified copy of the claimant's passport issued by the Republic of India and seized by Canadian immigration authorities.

25 The claimant's testimony regarding his personal details was consistent with the identity documents provided.

With regards to nexus, the claimant's fears stem from his social media posts that are perceived as oppositional to the ruling regime and as such, the panel finds that the claimant's alleged fear has a nexus to the Convention ground, political opinion.

30 With regards to credibility, the panel finds on a balance of probabilities that the claimant is credible in his allegations and in his subjective fear of returning to India.

35 The claimant described his political involvement in India in a forthcoming manner free from embellishment and that the claimant did not allege to be actively involved in the movement for Khalistan other than social media posts and attending yearly commemorative event.

40 The claimant provided testimony on his motivation for supporting an independent Khalistan in a rational and in a fluid manner. He had knowledge of the Akali Dal Mann party as the primary party supporting the movement and he had knowledge of prominent figures from the movement.

45 He also included testimony on mistreatment in India including on how it impacted his family personally. The claimant gave testimony consistent with his Basis of Claim on the attacks that he faced in India due to his social media posts and his testimony on his injuries was consistent with the medical note that he provided.

The claimant provided corroborating documents in the form of affidavits from family members including his mother and his maternal uncle. The panel asked the claimant to explain an apparent inconsistency in-between the letters wherein the claimant's mother alleges that the claimant's grandfather was beaten to death for failing to pay authorities a bribe in 2022 wherein the claimant's maternal uncle alleges in his

statement that the claimant's grandfather was saved by villagers. The claimant explained that it's his understanding that the villagers initially stopped the authorities from beating his grandfather and then his grandfather later succumbed to his injuries. The panel accepts that this is a reasonable possibility, and that the inconsistency is illusory.

5

On a whole, the, the claimant's testimony was consistent with the documents and the allegations and the panel doesn't find a valid reason to doubt their authenticity. More probative was the claimant's social media post that he provided. He provided over 100 pages of social media posts, and they show a history of pro-Khalistan social media posts and posts critical of the ruling regime going back over 300 weeks which is long before the claimant initiated his claim for protection in Canada.

10

Based on the documents and the claimant's testimony, the panel finds on a balance of probabilities that the claimant is an advocate for an independent Khalistan and that he faced attack and as such, he has subjective fear of return.

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The panel has considered the impact of the significant delay in Canada before the claimant claimed protection in Canada and the panel finds that the claimant's subjective fear of persecution is not negated by that delay in claiming protection in the claimant's circumstances.

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The country documentation in India is in line with the claimant's allegations and it establishes an objective basis for the claimant's subjective fear.

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When I look at Exhibit 3 of the National Documentation Package for India, item 12.8 of the National Documentation Package, it's a request for Information from, from the Immigration and Refugee Board and it's dated May 2023. According to this document, simple support of Khalistan is not illegal in India but in practice, the suspected Khalistan supporters are harassed by police and intelligence agencies and in many cases, they're falsely implicated in criminal cases which can take years to resolve. The same document provides examples of, of individuals who, who were sentenced to life imprisonment for possessing pro-Khalistan literature.

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Item 4.10 of the National Documentation Package, this document is another Response to Information Request from the Immigration and Refugee Board, and it indicates that individuals who advocate for Khalistan are monitored and they are often included on police lists for heightened security and that they're often charged in terrorism related cases which can result in them being detained for years before being released due to a lack of evidence.

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Additionally, in line with the claimant's allegations, the United Kingdom Home Office reports that Sikhs supportive of Khalistan are viewed as enemies by Hindu nationalists, were reported to subject Sikhs to harassment and pressure to reject religious practices and beliefs.

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So, the panel finds that this evidence provides an objective basis for the claimant's fear of return to India as a Sikh man with a track record of vocal support for independent Khalistan.

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As such, the panel finds that the claim is well founded.

With regards to state protection, the claimant has the responsibility to, to rebut the presumption that a state is capable of protecting its citizens. In the present case, the panel finds that the, that adequate state protection would be unavailable to the claimant in India because members of the Indian authorities including members of the police force in India are the agents of persecution so it would be unreasonable to

expect the claimant to approach the state for protection in the circumstances where, where the state is the agent of persecution. The state would be unwilling or unable to provide adequate protection to the claimant because it's the state itself that the claimant fears.

5 As such, the panel finds that the claimant has rebutted the presumption of state protection in his circumstances.

10 With regards to an internal flight alternative, the claimant must establish that he faces a persecution of harm throughout his country. The panel considered the possibility of an internal flight alternative in locations of Chennai, Bengaluru, and Mumbai. The panel finds that an internal flight alternative does not exist for the claimant in India and the panel's conclusion is based on credible evidence from the claimant establishing that he is a supporter of Khalistan and the country condition evidence, particularly 12.8 which indicates that supporters and perceived supporters of Khalistan are subjected to persecution by Indian authorities throughout all of India.

15 So based on this analysis, the panel has determined the claimant has established he faces a serious possibility of persecution on a Convention ground should he return to India.

20 Therefore, the panel concludes the claimant is a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*. The claim is accepted.

----- REASONS CONCLUDED -----

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I, *Lynne Ramster*, declare that this transcript is accurate
(June 18, 2024)

30 Transcription Agency: *XL Transcribing Inc.*