



**RAD File:** [REDACTED]

## NOTICE OF DECISION

[*Immigration and Refugee Protection Act*, section 111]  
[*Refugee Appeal Division Rules*, rule 50]

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[REDACTED]  
Member

In the matter of the appeal concerning:

UCI:

RPD File No.:

[REDACTED]

[REDACTED]

[REDACTED]

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An appeal was filed with the Refugee Appeal Division on [REDACTED] and considered on [REDACTED]

**The appeal is allowed.**

**The decision of the Refugee Protection Division is set aside. The Refugee Appeal Division determines that the person who is the subject of the appeal is a Convention refugee.**

Reasons for this decision are attached.

[REDACTED]

[REDACTED]

For the Registrar

Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for making the application.

[REDACTED]



Immigration and  
Refugee Board of Canada  
**Refugee Appeal  
Division**

Commission de l'immigration  
et du statut de réfugié du Canada  
**Section d'appel  
des réfugiés**

Immigration and Refugee Board - Western Region

Suite [REDACTED]

Vancouver, BC V6B 6C9

Tel: [REDACTED]

**RAD File:** [REDACTED]

**UCI:** [REDACTED]

## STATEMENT OF SERVICE

On [REDACTED] I have provided the following :

- **Notice of decision and reasons**

[REDACTED]

By My Case portal to the Appellant's Counsel Gurpreet Singh Khaira o [REDACTED]

By Government platform to IRCC - Toronto Triage  
Immigration, Refugees and Citizenship Canada  
IRCC Etobicoke - Toronto Triage Centre

[REDACTED]

By e-mail to IRB - Vancouver - RPD

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Registry Support Assistant



[Redacted]

[Redacted]

## Reasons and Decision – Motifs et décision

Person who is the subject of  
the appeal

[Redacted]

Personne en cause

Date of decision

[Redacted]

Date de la décision

Panel

[Redacted]

Tribunal

Counsel for the person who is  
the subject of the appeal

Gurpreet Singh Khaira

Conseil de la personne en  
cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

[Redacted]

## REASONS FOR DECISION

### OVERVIEW

[1] The Appellant [REDACTED] is a citizen of India and has claimed refugee protection pursuant to section 96 and 97(1) of the *Immigration and Protection Act* (the “Act”).

[2] The Appellant’s allegations are detailed and set forth in his Basis of Claim (BOC) form and his testimony. In brief, the Appellant fears persecution from the Indian police who he claims falsely [REDACTED]

[3] More specifically, the [REDACTED]  
[REDACTED]  
[REDACTED]  
Appellant to stop supporting [REDACTED]. Upon his refusal he alleges, he ended up not only being targeted by goons of the [REDACTED] but also by the police.

[4] The Appellant states that on [REDACTED] he was badly beaten by unidentified men and that his neighbour subsequently discovered him unconscious and took him to a nearby hospital. The Appellant attempted to file a police report but was rebuffed by the police due to being unable to identify the perpetrators and because the police considered the claimant to be anti-national.

[5] The Appellant alleges that after the elections he was occasionally harassed by [REDACTED] [REDACTED] and accused of being involved with [REDACTED]. The Appellant states he was first detained on [REDACTED] and alleges that the [REDACTED] of organizing [REDACTED] the [REDACTED] and alleges that he was beaten and interrogated by police and was released later the same day after his family and [REDACTED] paid a bribe to police.

[6] On the second occasion, the Appellant alleges that he was arrested at his home on [REDACTED] [REDACTED] [REDACTED] who drove him to an illegal detention center where he was tortured by both the [REDACTED] and the [REDACTED]. Again, the Appellant was accused of [REDACTED]

[7] After this the Appellant states he moved to [REDACTED] and states that while he believed he would be safe there that he was arrested by [REDACTED] accused [REDACTED]. Now believing that he was no longer safe anywhere in India, the Appellant's family made arrangements with an agent for him to leave India. The Appellant first moved to New Delhi where he resided for a few months while travel arrangements were being made and then he flew to central America and made his way to Mexico, the US and into Canada where he entered illegally on [REDACTED]. The Appellant has remained in Canada illegally without status since that time but eventually made a refugee claim and signed his BOC form on [REDACTED].

[8] The Appellant states that since he has left India, Indian authorities continue to search for him, and they have even approached his family on several occasions about his whereabouts and that they have made allegations about his involvement with many anti-national elements he denies he is involved with.

[9] The Appellant fears for his life and fears arbitrary arrest, torture, and death at the hands of Indian authorities if he returns to India.

[10] The Refugee Protection Division (RPD) rejected the Appellant's claims, finding that the determinative issue was credibility, and that the Appellant was not credible. For the following reasons, I find this decision was incorrect.

[11] The appeal is allowed. Pursuant to paragraph 111(1)(b) of the *Immigration and Refugee Protection Act* (IRPA), the RAD sets aside the determination of the RPD and substitutes its own determination that the Appellant is a Convention refugee.

## **ROLE OF THE RAD**

[12] The standard of correctness applies to this appeal as set out by the Federal Court of Appeal in *Huruglica*.<sup>1</sup> This requires an independent assessment of the refugee claim to determine whether the RPD was correct in its findings and determinations. While deference can be afforded to the

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<sup>1</sup> *Huruglica v. Canada (Citizenship and Immigration)*, 2016 FCA 93; *Rozas del Solar v. Canada (Citizenship and Immigration)*, 2018 FC 1145.

[REDACTED]

RPD on specific issues when it enjoys a meaningful advantage over the RAD in making findings of fact or mixed fact and law, such an advantage does not arise in the present case.

## **NO NEW EVIDENCE AND NO JURISDICTION TO HOLD AN ORAL HEARING**

[13] The Appellant has not submitted new evidence in support of their appeal. Having admitted no new evidence, the RAD has no jurisdiction to convene an oral hearing.<sup>2</sup>

## **ANALYSIS**

### **Credibility**

[14] As per the decision [REDACTED] given under oath by refugee claimants is presumed to be truthful unless there is reason to doubt the truthfulness of said testimony.<sup>3</sup> However it is important to highlight that this presumption does not apply to inferences or speculation.

[15] In reviewing the RPD panel decision, it is clear that the RPD panel highlighted a few different credibility concerns pertaining to the Appellant's claim and ultimately found that the Appellant was not credible.

[16] In the Appellant's Memorandum, the Appellant states that Appellant erred in its assessment, and specifically, that the RPD Panel decision was based on "mere assumptions," that the RPD panel ignored critical [REDACTED] and that the RPD panel, "had a microscopic mindset, failing to draw the most transparent conclusion that the Applicant's complaint against the police further motivated the police to pursue him."<sup>4</sup> The Appellant further alleges that the RPD decision was not reasonable, justified, transparent, and intelligible.<sup>5</sup>

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<sup>2</sup> *Immigration and Refugee Protection Act (IRPA)*, S.C. 2001, c. 27, as amended, subsection 110(4); *Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 96; *Raza v. Canada (Citizenship and Immigration)*, 2007 FCA 385; *Immigration and Refugee Protection Act (IRPA)*, S.C. 2001, c. 27, as amended, subsection 110(6).

<sup>3</sup> *Maldonado v. Canada (Minister of Employment and Immigration)*, 1980 2FC 302.

<sup>4</sup>

<sup>5</sup>

[REDACTED]

[17] In reviewing all of the evidence before me, while each of the arguments made by the Appellant, I also cannot agree with some of the negative credibility findings made by the RPD panel and find that those that remain are not sufficient to dislodge the presumption of truthfulness afforded to refugee claimants in [REDACTED]

[18] More specifically, in its credibility analysis the RPD panel drew a negative credibility inference flowing from its questioning of the [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] find is that the RPD panel is asking the Appellant to provide a cogent and adequate answer to something he could not know. More specifically, [REDACTED] is essentially asking the Appellant to give a rationale for a claim made by the [REDACTED] to his family and then undermining his credibility based on a response to a question he could not know for sure. Why the

[REDACTED]  
[REDACTED]

[REDACTED] it would not be appropriate to draw a negative credibility inference on a question of this type that is based on a false allegation from police and requires only speculation on the part of the Appellant in order to answer why they would say it. It also would not be appropriate to have this negative credibility inference undermine the Appellant's overall credibility either.

[19] In regards to the RPD panel's negative credibility finding related to his delay in making a

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

\_\_\_\_\_

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[20] I also note that an Appellant's unique profile and level of sophistication and/or education are important factors to consider [REDACTED]

[REDACTED] In this instance, the Appellant has led evidence that he is a person with a low education profile who worked [REDACTED] aware of the [REDACTED] and was first told that it was not possible only to be told years later that it was possible. Similarly, in regards to why [REDACTED]

[REDACTED] Under the circumstances, and particularly in regards to the Appellant's profile, not only do I find his responses reasonable as a lack of knowledge about a country's refugee system is something that could not very well now be known to a newcomer and particularly someone with limited education [REDACTED] but [REDACTED]

[REDACTED] but [REDACTED]

[21] After examining the entire record before me, I find that the only areas where credibility is perhaps an issue is in relation to why the Appellant did not obtain any supporting documents relating to his claim from his wife or other family members and his response was that he did not want to get them involved and/or in trouble. [REDACTED]

[REDACTED]

[REDACTED]

\_\_\_\_\_

[REDACTED]

[REDACTED]



[REDACTED]

[22] As such, while [REDACTED]

[REDACTED]

[REDACTED] not find that this negative credibility finding is sufficient to remove the presumption of truthfulness afforded the Appellant [REDACTED]<sup>11</sup>

[23] [REDACTED]

[REDACTED]

regards to the fact that he travelled there. [REDACTED]

[REDACTED]

risers to the level of negative credibility inference. Furthermore, even if it did rise to the level of a negative credibility inference, I do not find that this negative credibility inference would be sufficient (even in tandem with the negative credibility inference drawn from his inadequate response relating to his wife not sending him more supporting documentation) to remove the presumption of truthfulness [REDACTED]

[REDACTED]

leave India and the manner in which he did are all consistent and that the Appellant testified in a spontaneous and forthright matter on these topics. I therefore find the Appellant credible in relation to the core aspects of his claim and that he is credible overall.

*Conclusion on Credibility*

[24] Based on evidence before me and the holding [REDACTED] I find on the balance of probabilities that the Appellant's core claims are credible and that overall, he is credible.

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[REDACTED]

[REDACTED]

**Internal Flight Alternative**

[25] Although the determinative issue in this matter was credibility, at the oral hearing the RPD panel rose and canvassed with the [REDACTED]

[REDACTED]

[26] An [REDACTED] is a place in an appellant's country of origin where they could relocate safely. The question of whether an [REDACTED] exists is an integral part of the Convention refugee definition such that a claimant who has an [REDACTED] cannot meet the definition of [REDACTED]. The

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[27] With respect to the second prong of the [REDACTED] it is an objective one that asks if it is objectively reasonable to expect the claimant to seek safety in a different part of the country. More specifically, there is a very high threshold for what [REDACTED] unreasonable in all the circumstances and the appellant must provide proof of adverse conditions which would jeopardize their life and safety travelling to and in living in the [REDACTED]

[28] After reviewing all of the evidence in this matter, including the objective evidence contained in the [REDACTED] I do not find that the Appellant has a [REDACTED] in either of the proposed

[REDACTED]

[REDACTED]

[29] [REDACTED]  
his motivation to pursue the Appellant, and his ability to search for them and find them throughout

\_\_\_\_\_

[REDACTED]

[REDACTED]

[REDACTED]

India. There can only be a serious possibility of persecution or a risk of harm within the ambit of s. 97 of the *Act* if the agent of harm has both the “means and the motivation” to search for and locate the Appellant.<sup>17</sup>

[30] The Appellant has [REDACTED]

to be and have [REDACTED]  
[REDACTED]  
[REDACTED]

[31] [REDACTED]  
[REDACTED]  
[REDACTED]

[32] In addition, the Appellant has also led evidence that he is also [REDACTED] and I find that it is important to highlight that not only does the [REDACTED] underscores that the government, civil society and media [REDACTED] militants by default,<sup>20</sup> and that, "suspected [REDACTED] Accordingly, I find that the viability of each of the proposed IFAs is undermined because of the Appellant’s perceived [REDACTED] for him should he return to India.

[33] In addition, the NDP evidence also states the following:

\_\_\_\_\_

<sup>17</sup> *Nimako v. Canada (Citizenship and Immigration)*, 2013 FC 540, at para. 7; *Mayorga Gonzalez v. Canada (Citizenship and Immigration)*, 2012 FC 987 at para. 35.

<sup>18</sup> National Documentation Package, India, 31 May 2024, tab 10.13: *Databases, including the tenant registration (or tenant verification) system, the Crime and Criminal Tracking Network and Systems (CCTNS), National Automated Fingerprint Identification System (NAFIS), and POLNET; police access to the...* Immigration and Refugee Board of [REDACTED] IND201491.E, page 1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[34] An examination of the NDP evidence demonstrates that not only are [REDACTED] and the general public, but that local police do indeed have the ability to trace people from Punjab and arrest them [REDACTED] made by the Appellant in regards to his perceived [REDACTED]

[35] More specifically, while there [REDACTED] major crimes like murder and terrorism that they not only can work together but that there is a [REDACTED] track people in India in relation to their [REDACTED]

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[REDACTED] Databases, including the tenant registration (or tenant verification) system, the Crime and Criminal Tracking Network and Systems (CCTNS), National Automated Fingerprint Identification System (NAFIS), and POLNET; police access to the... Immigration and Refugee Board of Canada. 9 June 2023. IND201491.E, page 1.  
<sup>24</sup> Ibid., tab 12.8: *Treatment of Sikhs by society and authorities, particularly the police; state protection; situation and treatment of suspected or perceived [REDACTED] supporters in the state of Punjab by society and the authorities...* Immigration and Refugee Board of Canada. 25 May 2023. IND200932.E; tab 4.16: *Situation and treatment of members of Sikhs for Justice (SFJ) and their family members by authorities, including those returning*

[REDACTED]

[REDACTED]

[36] On the domestic front not only does India have [REDACTED]  
[REDACTED] where information concerning suspected major criminal activity can be entered,

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[37] In addition, on the international front I find that it is important to highlight that not only

[REDACTED]  
[REDACTED] in Canada, and moreover, that  
they are using their internationally tracked information to approach the family members of  
suspected activists in India in order to pressure and/or harass them in connection to the Canadian  
activists.<sup>28</sup>

[38] As such, given the evidence before me, especially India's harsh treatment of perceived

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[39] Given that the first prong of the [REDACTED] test is not satisfied, there is no need to undertake a second prong analysis. I do not find that the Appellant has a viable [REDACTED] anywhere in India.

*State Protection*

[40] As it is the [REDACTED]  
[REDACTED]  
[REDACTED]

**CONCLUSION**

[41] The appeal is allowed. Pursuant to paragraph 111(1)(b) of the IRPA, the RAD sets aside the determination of the RPD and substitutes its own determination that the Appellant is a Convention refugee.

*(signed)*

[REDACTED]  
\_\_\_\_\_  
[REDACTED]  
\_\_\_\_\_  
**Date**

\_\_\_\_\_

[REDACTED]

[REDACTED]



**Full Transcript of a RPD Proceeding**  
*Private proceeding / Huis clos*

**Claimant** [REDACTED] **Demandeur d'asile**

**Place of the hearing** [REDACTED] **Lieu de l'audience**

**Hearing date** [REDACTED] **Date de l'audience**

**Panel** [REDACTED] **Tribunal**

**Counsel for the claimant(s)** Gurpreet Singh Khaira **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 ministre**

**Interpreter** [REDACTED] **Interprète**