

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 No. / N° de dossier de la SPR : TB8-10794

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	June 6, 2019 July 31, 2019	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	March 9, 2020	Date de la décision et des motifs
Panel	G. FRENETTE	Tribunal
Counsel for the Claimant(s)	James Stephen Schmidt	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

2020 CanLII 126779 (CA IRB)

Canada 

REASONS FOR DECISION

[1] XXXX XXXX (the “Claimant”) claims to be a citizen of India and is seeking refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.¹

SUMMARY

[2] The Claimant’s allegations are detailed in her Basis of Claim form (BOC)² and in her testimony. In summary, the Claimant fears persecution by her husband, XXXX XXXX, on the basis of her membership in a particular social group, namely her gender as a woman.

[3] The Claimant alleges that she was forced to marry her husband in 1996 and subsequently move from Delhi, India to the UAE, where her husband resided and worked. After years of physical and emotional abuse, the Claimant left her husband in the UAE and returned to India in XXXX 2018. A few days later, she travelled to the United States and subsequently crossed the border into Canada in late XXXX 2018 to claim refugee protection.

APPLICABLE GUIDELINES

[4] As this claim involves allegations of gender-based violence, I have considered and applied the *Chairperson’s Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*.³

DETERMINATION

[5] I find that the Claimant is neither a Convention refugee nor a person in need of protection because of the availability of an internal flight alternative (IFA) in India. My reasons are as follows.

ANALYSIS

[6] In making this assessment, in addition to considering and applying the *Chairperson’s Guideline 4*, I have considered all of the evidence, including the Claimant’s oral testimony, the claimants’ documentary evidence entered as exhibits, counsel’s submissions, and the National Documentation Package (NDP) for India⁴.

Identity

[7] The Claimant's oral testimony and documentary evidence establish that, on a balance of probabilities, the Claimant is a citizen of India. I was provided with certified true copies of the Claimant's Indian passports⁵, including the Claimant's current Indian passport, which is valid until 2026, as well as a previously issued passport, in addition to the Claimant's Income Tax Department (aka "PAN") card, the originals of which have all been seized by the Canada Border Services Agency⁶. I therefore find that, on a balance of probabilities, the Claimant has provided sufficient documentation to establish her personal identity and citizenship in India.

Internal Flight Alternative in Mumbai

[8] The determinative issue in this case is internal flight alternative (IFA). At the hearing, I identified the cities of Mumbai, Kolkata, and Hyderabad as possible locations within India where the Claimant could find safe haven, however my analysis will focus on the city of Mumbai. I have considered the totality of the evidence and find that the Claimant would not face a serious possibility of persecution nor be personally subjected to a risk to life or a risk of cruel and unusual treatment or punishment or danger of torture under S.97(1) of the *IRPA* if she was to relocate to Mumbai. I also find that it is not unreasonable for the Claimant to relocate there.

[9] In determining whether an internal flight alternative (IFA) exists in a particular case, I have applied the two-prong test as set out by the Federal Court of Appeal in *Rasaratnam*.⁷ To find that a viable IFA exists for the Claimant, I must be satisfied firstly that, on a balance of probabilities, the Claimant would be safe in the proposed IFA location, and secondly, that it would be reasonable for the Claimant to relocate there.

First prong: Safety

[10] I find that the Claimant does not face a serious possibility of persecution or risk of harm in the proposed IFA city because, on a balance of probabilities, the Claimant's alleged agent of persecution would not find her there, due in part to the country's large population and geography. India has a total land area of 2,973,193 square kilometers and a population of over 1.2 billion people, with "a very high population density exist[ing] throughout most of the country".⁸ The

proposed IFA city is itself sufficiently sizeable to support relocation. Mumbai is a city of 19.98 million inhabitants⁹ and is over 1400 kilometres from where the Claimant was born and raised, and where her and her husbands' families reside, in New Delhi¹⁰.

[11] When asked how her husband would be able to find her elsewhere in India, outside the national capital region of Delhi, the Claimant testified that her husband has contacts in both the UAE and India, which would make it “easy for him to trace me”. She further testified that her husband previously threatened that it would be easy to make a woman disappear in a large city like New Delhi and that he has connections to the ruling family in Dubai, as well as connections to police in Delhi, who have political contacts throughout India. When asked which political parties she was referring to regarding the Delhi police's political connections, the Claimant testified that she did not know because she is not interested in politics.

[12] The Claimant further testified that, in the UAE, she once witnessed her husband help a friend of his fabricate criminal charges against his wife in retaliation for her “raising her voice about her husband”. The Claimant testified that this was an example of how her husband is able to use his connections to, “get a job done”. In addition, the Claimant testified that her husband's financial advisor from Dubai knows, “high placed people in Hyderabad.”

[13] While I recognize and note that corruption is widespread and present at all levels of government in India¹¹, I find that it is more likely than not that the Claimant's husband would be unable to use his alleged contacts in the UAE, Hyderabad, and within Delhi police, to locate the Claimant in Mumbai, based on the objective documentary evidence before me.

[14] The United Kingdom Home Office report on *Internal Relocation*, dated January 2019, observes that tracking and surveillance systems in India “appeared to be limited and there is no centralised registration system in place to enable police to check the whereabouts of inhabitants in their own state or in other states or union territories”.¹² That report continues, stating that each state has responsibility for its own police force and that the “effectiveness and conduct [of each police force] varies across states.”¹³ Item 10.2 of the NDP also notes that there is minimal interstate police communication in India, except for cases of major crime like smuggling, terrorism and some high-profile organized crime.¹⁴

[15] Although item 2.1 of the NDP discusses the Central Monitoring System (CMS), a surveillance system in India that “gives security agencies... centralized access to the telecommunication network” as well as the ability to track individuals’ geographical locations in real time without the involvement of Telecom Service Providers¹⁵, an IRB Response to Information Request (RIR) notes that the Indian government began implementing the CMS in April 2013 and that, as of 2013, “only Delhi and Haryana have tested ‘proof of concept’ successfully”.¹⁶ It further states that Freedom House, in their 2015 Freedom on the Net report for India, is also reported as stating that in early 2014, a “minister told parliament ... that [CMS] is being phased in over the next three years”.¹⁷ An RIR issued in 2018 also discusses the CMS, noting that a representative of the Centre for Internet and Society (CIS) stated that “it must be clearly understood that no public documentation exists to explain the scope, functions, and technical architecture of the CMS.”¹⁸

[16] In addition to the CMS, item 10.6 of the NDP also discusses the Crime and Criminal Tracking Network and Systems (CCTNS), a database that has been deployed over a large part of India that “includes information on crime and criminals that interconnects police stations across the country”.¹⁹ That report states, however, that “[p]olice stations in India still work in silos as far as criminal information is concerned” and that a large part of the CCTNS is not yet implemented and has yet to become functional across the country.²⁰ Although the NDP indicates that tenant verification requirements in India may lead the police in one state to communicate or cross-check information with the police in other states²¹, item 10.6 notes that, with respect to tenant verification, although the CCTNS is supposed to assist the verification process and is accessible in almost all police stations in India, police forces are ill-equipped and short-staffed to actually carry out such verifications.²² With respect to the type of information that is inputted into the CCTNS, the NDP primarily discusses First Information Reports (FIR) and states that “[i]nformation about persons of interest is not recorded into the CCTNS but in classified databases”, which are not shared across states.²³ Finally, that report states that in matters of criminal investigation, and even for persons of interest, police will only communicate across state lines in cases of major crimes.²⁴

[17] The Claimant has not alleged that she was ever charged with a crime in India, much less a major crime, nor has she alleged that she is known by any police or government officials outside the National Capital region of Delhi. There is also no evidence that the Claimant’s name is on a list

of individuals wanted for serious crimes in India, that police in India have ever laid formal accusations against the Claimant, or that the Claimant has ever been issued a First Information Report or a warrant for her arrest in India.

[18] Based on the above objective documentary evidence, I find that, on a balance of probabilities, even if the Claimant's husband has sufficient connections to Delhi police to be able to find the Claimant within Delhi, the Claimant has not established that Delhi police forces have the ability to locate her outside of Delhi, given that there is no evidence that she is seriously suspected of or wanted for any major crimes in India or that an FIR or warrant have ever been issued in her name. It is therefore unlikely that the Claimant's name would be recorded in the CCTNS database, allowing her husband to find her location through the tenant verification process. Furthermore, given all of the above documentary evidence, including that there is minimal interstate police communication in India except for cases of major crime²⁵, I also find that it is more likely than not that the Claimant's husband would be unable to find the Claimant in Mumbai using his contacts outside of India and his contacts within the city of Hyderabad, which is located in a different state, over 700km away from Mumbai²⁶.

[19] I note that, in her Basis of Claim form, the Claimant states that she left her husband in Dubai and returned to Delhi on XXXX XXXX XXXX 2018. She further alleges that, in an effort to remain safe in India, she travelled to Amritsar, Punjab on XXXX XXXX XXXX 2018 and stayed there with some family friends, who were also known to her husband.²⁷ That evening, while she was at temple, the Claimant testified that her friends in Amritsar were approached by "unidentified people" who threatened to kill the Claimant if she did not return to Dubai. The Claimant also provided affidavits from her nephew²⁸ and her sister²⁹ corroborating her allegations that family friends in Amritsar received a threat to themselves, and a threat on behalf of the Claimant, on XXXX XXXX XXXX 2018. Given that the individuals who approached the Claimant's friends in Amritsar were "unidentified", and the fact that the individuals did not identify themselves as being connected to or sent by the Claimant's husband, I find that it is more likely than not that, even if the individuals were in fact sent by or connected to the Claimant's husband, the Claimant's husband discovered her location in Amritsar as a result of speaking to their mutual friends in that location. I further find that it is more likely than not that the Claimant's husband would be unable to find the Claimant in

the IFA location using this method, as the Claimant testified that she does not know anyone in Mumbai, that her husband has no family members outside of Delhi, and that the Claimant did not allege that her husband is connected to any individuals in Mumbai.

[20] The Claimant also testified that she speaks to her younger brother and sister in India approximately once a week and that, if she had to relocate within India, “I might try to communicate with them but for how long. Because of social media it’s not easy for a person to stay hidden for too long.” She further testified that, if she had to stop communicating with her brother or sister she would feel imprisoned and isolated. When asked whether either of her siblings have communication with her husband, the Claimant testified that “they don’t like him and they don’t talk to him.” It is reasonable to expect that the Claimant would take precautions on social media and enable sufficient privacy settings such that her husband would be unable to discover her location and subsequently find her in the proposed IFA location via social media. Furthermore, as previously noted, given that there is a lack of information available in the NDP regarding the scope and implementation of the CMS in India, I find that it is more likely than not that the Claimant’s husband would be unable to track her location in Mumbai, as a result of phone calls made to her siblings.

[21] I therefore find that the Claimant does not face a serious possibility of persecution or that she would be personally subjected to a danger of torture or a risk to her life or to a risk of cruel and unusual treatment or punishment, by her husband, in Mumbai.

[22] With respect to the Claimant’s residual profile, and whether she faces a serious possibility of persecution in Mumbai on the basis of her gender as a woman, I note that the United Kingdom Home Office report on *Women Fearing Gender-Based Violence*, dated July 2018, observes that gender-based violence against women in India is widespread, however also notes that “not all women experience, or are at risk of, gender-based violence, for example, women from higher socio-economic backgrounds.”³⁰ That report further notes that “[i]n general, the level of societal discrimination against women and girls in India is not sufficiently serious by its nature and repetition that it will reach the high threshold of being persecutory or otherwise inhuman or degrading treatment”, however each case must be determined on its own facts.³¹

[23] I note that in *Birkas v. Canada (Citizenship and Immigration)*,³² Justice Zinn of the Federal Court ruled that a claim based solely on a profile can succeed only if a claimant establishes that all persons with that profile have a well-founded fear of persecution under section 96 of the *IRPA* or establish a danger of torture or a risk to life or risk of cruel and unusual treatment or punishment under section 97. Furthermore, the Federal Court in *Nagy v. Canada (Citizenship and Immigration)*,³³ held that “[a]s the Court has pointed out on past occasions, it is not sufficient for an applicant to point to a country’s general negative human rights record.” That decision further states that “[g]eneral documentary evidence of Roma in general is not enough.”

[24] I find that the country condition articles and reports before me do not establish that all women in India, particularly single women who have previously been subjected to gender-based violence, have a well-founded fear of persecution or risk to life, danger of torture, or risk of cruel and unusual treatment or punishment under section 97.

[25] The 2018 DFAT Country Information Report assesses that women in India generally face a low risk of official discrimination and a moderate risk of societal discrimination and violence, particularly in rural areas and from lower castes.³⁴ Item 2.1 of the NDP also notes that “[w]omen in conflict areas, such as in the state of Jammu and Kashmir, the northeast, Jharkhand, and Chhattisgarh, as well as vulnerable Dalit or tribal women, were often victims of rape or threats of rape” but that the Indian government has made efforts to address the safety of women in urban areas, such as allocating \$410 million towards enhancing women’s safety in eight cities, including New Delhi, Mumbai, and Chennai.³⁵

[26] I note that the Claimant is a highly educated woman, having obtained a XXXXof XXXX XXXXand a XXXX XXXX XXXXinXXXX XXXX XXXX, and has previously worked as a XXXX XXXX XXXXe and XXXX XXXX in Dubai.³⁶ Furthermore, the Claimant has not alleged that she belongs to a low caste or that she is a Dalit or tribal woman. As a result, I find that the Claimant likely falls within the category of a woman with a “higher socio-economic” background. I also note that the proposed IFA location, Mumbai, is not considered a rural or conflict area, and is therefore not an area where women may face a higher risk of gender-based forms of violence, as indicated in the NDP.

[27] As noted in the above-mentioned case law, “it is not sufficient for an applicant to point to a country’s general negative human rights record”³⁷ to establish a well-founded fear of persecution. While I recognize that circumstances for many women in India are challenging and may be discriminatory, given the Claimant’s overall profile and the lack of any specific evidence pointing to individualized factors that may aggravate her risk, as well as the objective documentary evidence before me that does not establish a serious possibility of persecution in Mumbai for the Claimant’s particular profile, I find that the Claimant has not provided enough credible or trustworthy evidence to establish that, in her particular circumstances, she would face a serious possibility of persecution, danger of torture, or risk of harm, on a balance of probabilities, in Mumbai on the basis of her gender.

[28] Taking all the evidence into account, I therefore find that the Claimant would not face a serious possibility of persecution or would be personally subjected to a danger of torture or risk of harm in Mumbai and find that the first prong of the IFA analysis is therefore met.

Second Prong: Reasonableness

[29] There is “a very high threshold for the unreasonable test. It requires nothing less than the existence of conditions, which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions.”³⁸ Having considered the objective country documentation coupled with the Claimant’s personal circumstances, I find that conditions in the IFA city are such that it would not be unreasonable in all the circumstances, including those particular to the Claimant, for her to seek refuge there.

[30] The Claimant states in her Schedule A form that she completed a XXXX of XXXX as well as a XXXX XXXX XXXX XXXX in XXXX XXXX in India and that she worked as an XXXX XXXX at her husband’s company in the UAE, XXXX XXXX XXXX, for approximately nine years.³⁹ At the hearing, the Claimant testified that she was not in fact a XXXX at that company and that she only wrote that on her Temporary Resident Visa (TRV) application in order to obtain a visa to visit her daughter in Canada. When asked why she also wrote that she was an XXXX XXXX on her Schedule A form, the Claimant testified that she wanted to be consistent with what her TRV

application stated. The Claimant further testified that her duties as an “XXXX XXXX” included typing quotations and orders and occasionally communicating with the approximately thirty to thirty-five employees in the company. She also testified that she began her career in 1997 as a XXXX and then later on became an XXXX XXXX at a company named XXXX XXXX XXXX in Dubai. I find that, even if the Claimant did not hold an “XXXX XXXX” position at XXXX XXXX, and instead completed more administrative tasks there, given that she is highly educated and has significant work experience over a period of approximately twenty years, she would, more likely than not, be able to find employment and survive financially in the major urban centre of Mumbai.

[31] The Claimant also states in her Basis of Claim form that she speaks English, Punjabi, and Hindi.⁴⁰ At the hearing, with respect to difficulties that the Claimant may face in relocating to Mumbai, the Claimant testified that she travelled to Hyderabad previously and noticed that people who are from that state, and who speak the regional language, were given preferential treatment with respect to obtaining employment. I note that in Mumbai, languages spoken include English⁴¹, the “most important language for national, political, and commercial communication [in India]”⁴², and Hindi⁴³, the most widely spoken language in India⁴⁴. Given that the Claimant is able to speak both of those languages, I find that her language skills would further assist her in finding employment and sustaining herself in Mumbai.

[32] I also note that the Claimant has resided in Canada since XXXX 2018, where she testified that she currently works as a XXXX at a XXXX XXXX, has previously travelled to Europe and the United States⁴⁵, where she resided for approximately two months, and that she has shown great adaptability, by taking herself out of the alleged danger in Dubai and India and traveling to Canada⁴⁶. Despite these factors, the Claimant testified that one of the reasons that she would be unable to relocate to Mumbai is that she does not know anyone in Mumbai and that it would be a new place for her. Although I acknowledge that the Claimant’s adult children reside and study here in Canada, considering all of the above factors, I find that it is reasonable to expect that the Claimant, with her level of education, work experience, and travel history, be able to adapt to the new surroundings within the proposed IFA location and that relocating there would not be unduly harsh in her circumstances.

[33] I also have considered, in reaching my findings, counsel's submissions, the objective country documentation coupled with the Claimant's personal circumstances, and find that it would be reasonable for her to relocate to Mumbai as it would not cause more than the usual hardship inherent in any relocation, thus meeting the second prong of the IFA test. Mumbai has a major airport, facilitating direct travel to the IFA location.⁴⁷ The country documentation also observes the possibility of internal relocation in India, noting that "India is a diverse, multi-ethnic, multi-lingual society with a population of approximately 1.2 billion", that "[t]he law provides for freedom of movement and grants citizens the right to reside and settle in any part of the territory of India".⁴⁸ Item 5.11 of the NDP also notes that "there is also an increasing number of single, working women who can support themselves with the salary they earn."⁴⁹

[34] While the NDP indicates that relocation within India for single women and victims of gender-based violence was reported to be difficult due to the need to provide details of a male relative's name to access government services and accommodation, it also notes that "this alone does not make relocation unreasonable or unduly harsh" and that "[i]n general, it will be reasonable for a woman to relocate, especially if she is single and without children to support, able to access accommodation and support networks, or is educated, skilled or wealthy enough to be able to support herself."⁵⁰ The Claimant does not have any minor children to support in India, as her adult children currently reside and study in Canada, and note that the Claimant has a supportive male relative in India, namely her brother who she testified to speaking to approximately once a week, and that she is highly educated and has approximately twenty years of work experience, in addition to her work experience here in Canada.

[35] Although the NDP notes that single women face prejudice when searching for a house and that "women may need to visit numerous apartments before securing one and that they may face additional and 'often invasive' questioning during the rental process"⁵¹, given that, in general, it is reasonable for a woman to relocate in India, particularly if a woman is educated and skilled, and that the need to provide details of a male relative to access services and accommodation does not alone make a location unduly harsh, I find that the obstacles that the Claimant may face in securing accommodation in Mumbai does not make it unreasonable for her to relocate there.

[36] The Federal Court of Appeal⁵² has established that the test for an IFA analysis is an objective one, and the onus of proof rests on the claimant to show that it is objectively unreasonable for the claimant to do so. In this case, I find on a balance of probabilities that the Claimant has not discharged that onus.

[37] Taking into consideration all of these factors and circumstances, both personal and objective, I find on a balance of probabilities that the Claimant could safely and reasonably relocate to Mumbai without facing undue hardship. For all the above reasons, I therefore find both prongs of the test for IFA to be met.

CONCLUSION

[38] I find that the Claimant has a viable internal flight alternative in India. The Claimant has, therefore, not satisfied the burden of establishing a serious possibility of persecution on a Convention ground under section 96, or that, on a balance of probabilities, he would be personally subjected to a risk to life, or a risk of cruel and unusual treatment or punishment, or a danger of torture upon return to India, falling within the meaning of subsection 97(1) of the *IRPA*. I conclude that the Claimant is neither a Convention refugee nor a person in need of protection.

[39] The claim is therefore rejected.

(signed)

“G. FRENETTE”

G. FRENETTE

March 9, 2020

Date

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended, sections 96 and 97(1).

² Exhibit 2

³ *Chairperson’s Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Update*, Guidelines issued by the Chairperson pursuant to section 65(3) of the *Immigration Act*, IRB, Ottawa, November 25, 1996, as

continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the *Immigration and Refugee Protection Act*.

⁴ Exhibit 3, National Documentation Package (NDP) for India, version 31 May 2019 (hereinafter referred to as “NDP”)

⁵ Exhibit 1, Passport #XXXX issued XXXX 2006 and Passport #XXXX issued XXXX 2016

⁶ Exhibit 1

⁷ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.)

⁸ NDP, item 1.7

⁹ Ibid.

¹⁰ NDP, item 1.1

¹¹ NDP, item 2.1

¹² NDP, item 14.10

¹³ Ibid.

¹⁴ NDP, item 10.2

¹⁵ NDP, item 2.1

¹⁶ NDP, item 10.2

¹⁷ Ibid.

¹⁸ NDP, item 10.6

¹⁹ Ibid.

²⁰ Ibid.

²¹ NDP, item 14.8

²² NDP, item 10.6

²³ Ibid.

²⁴ Ibid.

²⁵ NDP, item 10.2

²⁶ NDP, item 1.1

²⁷ Exhibit 2 narrative at line 142

²⁸ Exhibit 6, item 11

²⁹ Exhibit 6, item 10

³⁰ NDP, item 5.9

³¹ Ibid.

³² *Birkas v. Canada (Citizenship and Immigration)*, 2013 FC 1184 at paragraph 8.

³³ *Nagy v. Canada (Citizenship and Immigration)*, 2013 FC 640 at para. 68 and 69.

³⁴ NDP, item 1.5

³⁵ NDP, item 2.1

³⁶ Exhibit 1, Schedule A

³⁷ See *Nagy*

³⁸ *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, 2000, 16789 (FCA)

³⁹ Exhibit 1, Schedule A

⁴⁰ Exhibit 2, ques 1(g)

⁴¹ NDP, item 1.9

⁴² NDP, item 1.7

⁴³ NDP, item 1.9

⁴⁴ NDP, item 1.5

⁴⁵ Exhibit 1, Passport #XXXX issued XXXX 2006 and Passport #XXXX issued XXXX 2016

⁴⁶ See *Momodu*, para 21.

⁴⁷ NDP, item 1.1

⁴⁸ NDP, item 14.10

⁴⁹ NDP, item 5.11

⁵⁰ NDP, item 5.9

⁵¹ NDP, item 5.11

⁵² See *Ranganathan*