

Federal Court



Cour fédérale

Date: 20150513

Docket: IMM-7143-14

Citation: 2015 FC 630

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 13, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

KARNAIL SINGH MULTANI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) for judicial review of a decision of the Refugee Protection Division (RPD) dated September 17, 2014, rejecting the applicant's claim for refugee protection.

II. Facts

[2] The applicant is an Indian citizen of Sikh faith who is 47 years old.

[3] When he retired from the Indian army on October 1, 2004, the applicant received a lump sum of 10 Lakh rupees (100,000 rupees).

[4] On October 3, 2004, a man named Joginder Singh (Joginder) convinced the applicant to invest that money with him, promising him that the amount would double in only three years.

[5] In October 2007, the applicant asked Joginder to return his money. However, Joginder refused, stating that the amount invested by the applicant would double again in 2010.

[6] At that point, the applicant informed the police of Joginder's refusal to return his money and after some checking, the police informed the applicant that the financial company with which he believed to have dealt did not exist and that he had likely been the victim of fraud.

[7] That loss purportedly ruined the applicant.

[8] On October 15, 2007, the applicant was kidnapped and beaten by two men, who threatened to kill him if he sought police protection or if their leader, Joginder, was arrested by police.

[9] Nevertheless, the applicant notified the authorities and reported the attack. However, the police refused to take action because the applicant did not know the identity of his attackers.

[10] On or about October 30, 2007, the applicant was attacked again by three men and one of them tried to strangle him with a scarf. The three men then informed the applicant that they knew that he had contacted the police about Joginder and threatened to kill him if he attempted to pursue the matter either through the police or through the courts.

[11] In January 2011, while in Amritsar, the applicant happened to come across Joginder and asked him to return his money or he would call the police. One of the men who was with Joginder took out a firearm and threatened to kill the applicant and Joginder and his companions ran away.

[12] Two weeks later, two men showed up at the applicant's house. They informed his spouse, who was alone at the time, that they would kill the applicant once they found him.

[13] The applicant then retained the services of a smuggler, selling his wife's jewellery, in order to leave India for Canada on February 16, 2011.

III. Impugned decision

[14] Following a hearing on September 11, 2014, the RPD found that the applicant is not a Convention refugee or a person in need of protection under sections 96 and 97 of the IRPA.

[15] The RPD based its decision on the applicant's lack of credibility, lack of fear by reason of any of the five grounds set out in section 96 of the IRPA, and lack of proof that the applicant would face a risk in India, as set out in section 97 of the IRPA.

IV. Statutory provisions

[16] The statutory provisions of the IRPA relevant to refugee status determination are reproduced below:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son

nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Exclusion – Refugee Convention

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

Exclusion par application de la Convention sur les réfugiés

98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

V. Issue

[17] Is the RPD's decision reasonable?

VI. Analysis

[18] It is established that credibility findings, described as the "heartland of the [RPD]'s jurisdiction", are findings of fact that are reviewable on a reasonableness standard (*Zhou v Canada (Minister of Citizenship and Immigration)*, 2013 FC 619 at para 26; *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339 at para 46).

[19] In judicial review, reasonableness is concerned mostly with the existence of "justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47).

[20] Therefore, it is the RPD's role to assess the evidence adduced and to draw the necessary inferences from it (*Cienfuegos v Canada (Minister of Citizenship and Immigration)*,

[2009] FCJ No 1591 at para 29). Justice Michel Beaudry stated the following in

Gutierrez v Canada (Minister of Citizenship and Immigration), [2009] FCJ No 617 at para 14:

[14] The panel is in the best position to assess the explanations provided by the applicant with respect to the perceived contradictions and implausibilities. It is not up to the Court to substitute its judgment for the findings of fact drawn by the panel concerning the applicant's credibility (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 181, 146 A.C.W.S. (3d) 325 at paragraph 36; *Mavi v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1 (F.C.T.D.) (QL)).

[21] In its reasons, the RPD identified a number of inconsistencies in the applicant's oral and written testimony with respect to determinative aspects of his refugee claim. Those findings led the RPD to conclude that the applicant's narrative is a fabrication.

[22] In support of its decision, the RPD relied on the following regarding the applicant's lack of credibility:

- (a) The RPD drew an adverse inference from the contradictions in the evidence regarding the applicant's banking transactions. The applicant stated in his Personal Information Form (PIF) that he received a lump sum amount of 10 Lakh rupees on October 1, 2004. However, the bank statements show that between September 2 and 30, 2004, the applicant received four amounts totalling 1,035,066 rupees.
- (b) The dates surrounding the meeting and the investment with Joginder are not consistent. The applicant alleges that he met Joginder on October 3, 2004, and that it was at that time that he convinced him to invest his money with him. However, the relevant bank statement indicates that 10 Lakh rupees were withdrawn on October 2, 2004, prior to the applicant having met Joginder.

- (c) There are inconsistencies in the applicant's financial situation. The applicant claims that his investment with Joginder ruined him and that he is financially impoverished. However, the applicant's bank statements demonstrate that he receives a monthly pension. Furthermore, the applicant testified that he has been self-employed since October 2004 as a farmer on his own land (until his departure for Canada), which he makes a profit from by selling rice and wheat to support his family. In addition, the applicant lives in a house that he inherited from his father. Finally, the evidence demonstrates that the applicant and his wife had the financial means to travel to Thailand in 2005-2006.
- (d) The applicant provided contradictory statements regarding debts incurred in India. The applicant claims that his life is also in danger from his creditors. The applicant testified that he had to borrow 20 Lakh rupees in order to provide a dowry for his daughter and because he was unable to pay back all of his debt, his creditors filed a complaint with the police and were apparently looking for him. However, in his PIF, the applicant states that his only daughter is unmarried.
- (e) The applicant did not demonstrate that he would face a risk if he had to return to India. The RPD found that even if it accepted the applicant's testimony that he invested a sum of money with Joginder, the evidence shows that it is unlikely that Joginder is looking for the applicant or wishes to kill him.

[23] It was open and reasonable for the RPD to weigh the testimony provided by the applicant and to find that he lacked credibility with respect to the evidence submitted, because of the

multiple contradictions identified (*Singh v Canada (Minister of Citizenship and Immigration)*, [2007] FCJ No 97 at para 28).

[24] It was also open to the RPD to consider the lack of evidence that could corroborate the essential elements of the applicant's claim, namely regarding his alleged prospective fear and persecution.

[25] The Court finds that the RPD's findings are reasonable and rooted in the evidence in the record and that the intervention of the Court is unwarranted.

VII. Conclusion

[26] In light of the foregoing, this application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. There is no question of general importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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