

Federal Court



Cour fédérale

**Date: 20191030**

**Docket: IMM-2173-19**

**Citation: 2019 FC 1363**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Montréal, Quebec, October 30, 2019**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**Sarbjit SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] Sarbjit Singh is seeking judicial review of a decision of the Refugee Appeal Division [RAD], dated February 15, 2019, dismissing his appeal and confirming that he is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

## II. BACKGROUND

[2] Mr. Singh is a citizen of India. On September 9, 2016, he received a Canadian temporary resident visa; on October 23, 2016, he was admitted to Canada; and on December 21, 2016, he filed a refugee protection claim in Canada. In his *Basis of Claim Form* [Form], he states that he filed his refugee protection claim because his life and dignity would be in danger if he returned to India.

[3] In short, Mr. Singh alleges that he was sexually abused by the manager of his cricket team, the “Mishra Sports Club in Delhi” in India and in Canada and was at risk of being killed by this manager and being arrested by the police in India, who accused him of being gay. In support of his refugee protection claim and in addition to his Form, Mr. Singh filed the following into the RPD record: photos of himself and his teammates, his boarding pass for the flight from Toronto to Calgary on October 28 and a power of attorney and affidavit from his mother. During the hearing before the RPD, Mr. Singh filed additional photos, most notably a photo of a jacket bearing the emblem of the Mishra Sports Club.

[4] The RPD concluded that Mr. Singh was not a refugee or a person in need of protection within the meaning of sections 96 and 97 of the Act. The RPD found, first, that Mr. Singh failed to credibly establish that he was a registered member of the Mishra Sports Club cricket team, and second, that the evidence concerning his sexual victimization was not plausible.

[5] The RAD only reviewed the RPD's first finding, concerning Mr. Singh's registered membership in the Mishra Sports Club team, and in this regard, it noted (1) doubts because of inconsistencies and contradictions in the information provided in Mr. Singh's Canadian visa application, his Form and his testimony; (2) a lack of acceptable documents demonstrating that he was a member of the Mishra Sports Club team; (3) inconsistencies or contradictions arising from the photos submitted by Mr. Singh; and (4) Mr. Singh's confused testimony concerning the training schedules for the Mishra Sports Club team.

### III. RAD DECISION

[6] The RAD conducted an in-depth review of the RPD's facts and findings and concluded that Mr. Singh had simply failed to credibly establish that he was a member of the Mishra Sports Club cricket club, a crucial fact that lay at the heart of his refugee protection claim.

[7] With respect to the first point, the RAD confirmed the RPD's doubts concerning the veracity of the information provided, since Mr. Singh testified that nine players and two members of the team's staff had come to Canada, while the visa application file only accounted for five players. The RAD also noted that the visa application does not mention the fact that Mr. Singh had a brother, has a different date of birth for his sister, states a different level of education for Mr. Singh had and indicates that his father works in agriculture, while Mr. Singh testified that his father lives primarily in Delhi for his company. The RAD agreed with the RPD in that these elements were not determinative with respect to Mr. Singh's credibility, but that

combined with other inconsistencies and contradictions, Mr. Singh failed to credibly establish that he was a member of the Mishra Sports Club team.

[8] With respect to the second point, the RAD also confirmed the negative credibility inference drawn by the RPD because Mr. Singh did not present any documentary evidence to demonstrate that he was a member of the Mishra Sports Club and did not explain this lack of evidence.

[9] With respect to the third point, the RAD noted the inconsistency arising from the fact that photos were submitted to demonstrate that Mr. Singh was a member of the Mishra Sports Club team, but that he and his teammates appear to be wearing another team's uniform.

[10] Lastly, the RAD noted the inconsistency or implausibility arising from the fact that Mr. Singh testified that he had travelled to Canada with two Mishra Sports Club uniforms, but failed to file photos of these uniforms in evidence. In short, the RAD confirmed that the RPD did not err in concluding that the photos failed to credibly establish that Mr. Singh was a member of the Mishra Sports Club team.

[11] With respect to the fourth point, the RAD noted that the RPD had contributed to the confusion in Mr. Singh's testimony concerning the training schedule for the Mishra Sports Club team. However, the RAD noted a further inconsistency or implausibility between Mr. Singh's

testimony that he trained in Jalandhar, and not in Delhi, and the information provided in his Form, in which he failed to mention that he trained in Jalandhar and instead confirmed that he was happy to play in a major city.

[12] Consequently, the RAD upheld the RPD's finding that Mr. Singh failed to credibly establish that he was a member of the Mishra Sports Club team. It therefore determined that Mr. Singh was not a Convention refugee or a person in need of protection.

#### IV. POSITIONS OF THE PARTIES

##### A. *Mr. Singh's position*

[13] Mr. Singh bases his arguments on the reasonableness standard of review and adds that the RAD made several errors that justify this Court's intervention.

[14] Mr. Singh argues that it was unreasonable for the RAD to conclude that he was not a member of the Mishra Sports Club team because (1) it is unreasonable to criticize his knowledge of his teammates because he had been a member of the team for a short period of time; (2) according to him, the contradictions between his visa application and his *Basis of Claim Form* are justified by the fact that his visa application was completed by the team; (3) the visa officer's decision constitutes evidence of his membership in the Mishra Sports Club team; (4) his explanations as to why he and his fellow teammates were wearing the uniform of the Dreams Sports Club during training in Canada are reasonable, and the Dreams Sports Club had also

provided uniforms in the past; and (5) the RAD did not indicate why it found the applicant's explanations concerning the fact that he trained in Jalandhar and the fact that he met with the team manager every weekend to be implausible.

[15] Lastly, Mr. Singh adds that the facts that he alleged must be assumed to be true, since the RAD did not highlight any valid contradictions, inconsistencies or implausibilities.

B. *Minister's position*

[16] The Minister's arguments are also based on the standard of review of reasonableness.

[17] The Minister's response to Mr. Singh was that the RAD rendered a reasonable decision in confirming the RPD's decision and dismissing the applicant's appeal. The Minister states that it was open to the RPD to consider the information in the visa application. Even though the Minister acknowledges that a minor visa applicant should not be blamed for incorrect information submitted by an adult who signed his or her documents, the Minister submits that the matter nevertheless involves evidence containing several gaps that were presented in support of Mr. Singh's allegations and which the RPD could take into consideration. The Minister also submits that the RAD rightly concluded that the explanation concerning the training program with the Mishra Sports Club was inconsistent, that there is an unjustified lack of evidence to corroborate the applicant's ties to the Mishra Sports Club cricket team, as such evidence should exist, and that the photos filed into evidence fail to prove that the applicant was a registered

member of the Mishra Sports Club team, because they instead raise contradictions and implausibilities in the applicant's story.

V. ANALYSIS

[18] The applicable standard for reviewing an RAD decision is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*]). It is therefore the Court's duty to verify the existence of justification, transparency and intelligibility within the decision-making process, and ensure that "the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

[19] Where the reasonableness standard applies, it calls for deference. Reviewing courts cannot substitute their own view of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, para 47). There might be more than one reasonable outcome, and it is not the role of a reviewing court to reweigh the evidence (*Khosa*).

[20] Accordingly, in this case, the RAD weighed the evidence and noted the inconsistencies in the information provided in the visa application, the Basis of Claim Form and Mr. Singh's testimony; the fact that the photos do not show any of the players wearing the jersey of their Mishra Sports Club team when it would have been easy to provide such photos; the fact that

Mr. Singh did not provide any documents to confirm that he was a registered or participating member of the Mishra Sports Club team; and the inconsistencies between Mr. Singh's testimony and the information provided in his Form concerning his training in India.

[21] In the case at bar, it was reasonable for the RAD to conclude that the inconsistencies and contradictions in Mr. Singh's story undermined his credibility and go to the heart of his application, since the nature of his allegations require, at a minimum, that he demonstrate his participation in the Mishra Sports Club team. Furthermore, the RAD's decision is quite detailed and justified. Mr. Singh does not agree with the RAD's findings, but that does not justify the Court's intervention on judicial review.



**JUDGMENT in IMM-2173-19**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed, and no question is certified.

“Martine St-Louis”

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Judge

Certified true translation  
This 13th day of November, 2019.  
Michael Palles, Reviser

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2173-19

**STYLE OF CAUSE:** SARBJIT SINGH v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** OCTOBER 23, 2019

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** OCTOBER 30, 2019

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