

Federal Court



Cour fédérale

Date: 20191104

Docket: IMM-1957-19

Citation: 2019 FC 1375

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, November 4, 2019

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

JASWINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] Jaswinder Singh (Mr. Singh) is seeking judicial review of a decision of the Refugee Appeal Division [RAD], dated February 25, 2019, dismissing his appeal, confirming the decision of the Refugee Protection Division [RPD], dated March 24, 2017, and determining that he is neither a Convention refugee nor a person in need of protection.

[2] For the reasons set out below, the application for judicial review will be dismissed.

II. BACKGROUND

[3] Mr. Singh is a citizen of India. According to the documents in the Certified Tribunal Record [CTR], his application for a Temporary Resident Visa (TRV) was registered by the visa service on May 8, 2016, his TRV was issued on June 1, 2016, he entered Canada on July 7, 2016, and he filed a refugee protection claim in Canada on December 8, 2016. Mr. Singh is a reputable musician and, again according to the documents in the CTR, he applied for a TRV in order to participate in a number of shows in Canada, as a musician in a group. The notes in the system indicate in particular that on May 7, 2015, US authorities rejected the visa application that Mr. Singh had submitted to them.

[4] Consequently, in December 2016, Mr. Singh claimed refugee protection in Canada, alleging a fear of being targeted by the police in India, if he returned to India because he had not complied with the conditions of his release. In support of his refugee protection claim, Mr. Singh filed, among other things, documents establishing his status as a renowned musician, and to support his alleged fear, he also filed an affidavit by a municipal councillor in India, a letter from the clerk at the police station in India and a document confirming the purchase of a vehicle in September 2010.

[5] Essentially, according to the information provided in his *Basis of Claim Form* [Form], Mr. Singh states that he bought a vehicle in September 2010 for the purpose of operating a taxi. From 2010 to January 2015, the taxi was driven by an individual, and as of January 2015, it was driven by Ranjeet Singh. On July 6, 2015, Ranjeet Singh was pulled over by the police, who found firearms in the car. The police subsequently tracked down and arrested Mr. Singh, the owner of the vehicle, placed him in detention and tortured him. On July 9, 2015, Mr. Singh was released subject to conditions, including the requirement to report to police on a monthly basis, not to leave the village without permission and to surrender his passport. Mr. Singh reported to the police station every month as required, but on May 5, 2016, he was arrested again and then released three days later. In his account of the events, Mr. Singh states that he received assistance from a municipal councillor and a clerk at the police station, with the former using his influence to secure Mr. Singh's release and the latter returning Mr. Singh's confiscated passport, despite the personal risks involved.

[6] The RPD determined that Mr. Singh 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]. The RPD called Mr. Singh's credibility into question and highlighted inconsistencies and contradictions arising from various elements of his story, as well as a lack of evidence on some points. The RPD also found that Mr. Singh had an internal flight alternative.

III. RAD DECISION

[7] The RAD focused solely on the issue of credibility, finding that it was unnecessary to make a determination on an internal flight alternative, and confirmed the RPD's decision.

[8] The RAD reviewed Mr. Singh's allegations and concluded that the following findings by the RPD were correct: (1) Mr. Singh failed to establish that he was the owner of a taxi, since he only submitted a single document confirming the purchase of a vehicle, it is unlikely that India would not require registration for a taxi, and the affidavit by the municipal councillor contains a contradictory assertion; (2) the contradictions between the information provided in his Form and the information provided during his testimony, as well as Mr. Singh's shifting testimony, undermined the credibility of Mr. Singh's allegation that the police suspected him of being an accomplice; (3) it is unlikely that the police would have released Mr. Singh multiple times if he was truly suspected of being involved with other militants; and (4) it is unlikely that the clerk would have risked his job and security by giving Mr. Singh's passport back to him twice.

IV. POSITIONS OF THE PARTIES

A. *Mr. Singh's position*

[9] Mr. Singh submits that issues relating to credibility and the interpretation of a home statute are subject to the standard of review of reasonableness and that the decision was unreasonable.

[10] With respect to the substantive grounds, Mr. Singh first submits that the RAD's interpretation of sections 110 and 111 of the Act was unreasonable, in that the RAD should not

have deferred to the RPD's findings of fact (*Canada (Citizenship and Immigration) v Huruglica*), 2016 FCA 93 at para 58 [*Huruglica*]). He acknowledges that the standard of correctness applies and that in exceptional cases, deference is necessary if the RPD enjoys a meaningful advantage (*Huruglica* at para 70). However, he added that when the RPD has no advantage, as in this case, when it deemed that the applicant's story was not plausible based on common sense, the RAD should not show any deference.

[11] Mr. Singh is contesting three of the findings concerning his credibility. First, Mr. Singh contends that the finding that he failed to establish ownership of the taxi is unreasonable, since he had explained that a licence was not necessary when the taxi provides service exclusively in Punjab. He adds that it was also unreasonable for the RAD to require him to produce a photo of himself driving a taxi, or other documents related to the operation of a taxi, since he was not the driver of the taxi and because the principles developed by the case law to require corroborating evidence were not respected. Lastly, he argues that the municipal councillor's affidavit constitutes evidence that corroborates his allegation, since the municipal councillor states in it that Mr. Singh's problems stem from his ties to the driver of his taxi.

[12] Second, Mr. Singh submits that the RAD was unreasonable in its finding concerning his shifting testimony before the RPD, as regards his monthly visits to the police station, when it concluded that his answers did not demonstrate that the police linked him to militants. In this regard, Mr. Singh submits that the RAD demonstrated a lack of flexibility and that it disregarded the fact that the events had occurred in India and that the police authorities are corrupt.

Mr. Singh also contends that it was quite normal for him to have some differences between his Form and his testimony, particularly with respect to the issue of chores at the police station, because the events had occurred some time ago. He also submits that it was unreasonable for the RAD to conclude that the police in India would not have released him if they truly believed that he was an accomplice of militants, considering the context and the fact that the police authorities are corrupt. Lastly, Mr. Singh maintains that the RAD erred in concluding that his testimony concerning the clerk's actions was not credible because, on the contrary, Mr. Singh had understandably refrained from providing a lot of details, given the clerk's concerns.

[13] Finally, Mr. Singh claims that the RAD erred in concluding that the RPD did not ascribe any probative value to the municipal councillor's affidavit because that is not what the RPD literally wrote about this affidavit.

[14] Mr. Singh therefore argues that the RAD made unreasonable errors in its analysis of the applicant's credibility.

B. *Minister's position*

[15] In response, the Minister submits that the RAD's decision was reasonable. The Minister argues that there is no basis for the argument that the RAD deferred to the RPD, and that the RAD, on the contrary, clearly applied the standard of review of correctness and conducted an independent review of the RPD's findings.

[16] The Minister also contends that it was open to the RAD to consider the lack of evidence of taxi operations and the lack of corroborating evidence, given the applicant's credibility issues. The Minister also argues that the RAD could require corroboration, since it rejected Mr. Singh's explanations.

[17] Essentially, the Minister maintains that the RAD did not err in considering the inconsistent and implausible aspects of Mr. Singh's story, the contradictions between his testimony versus his other statements, the lack of evidence to support his allegations and the value of certain documents.

[18] The Minister submits that the lack of corroboration noted by the RAD could be considered, owing to Mr. Singh's credibility issues (*Imaniraguha v Canada (Citizenship and Immigration)*, 2014 FC 349 at para 31).

[19] The Minister submits that Mr. Singh in fact disagrees with the RAD's findings, which does not justify the intervention of the Court.

V. DISCUSSION

[20] The standard of review of reasonableness applies in this case (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*]). Where this standard applies, it calls for deference. Reviewing courts cannot

substitute their own appreciation 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. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome (*Khosa*). Moreover, when the issue that is subject to judicial review concerns a credibility assessment, the Court must exercise considerable restraint (*Ortez Villalta v Canada (Citizenship and Immigration)*, 2010 FC 1126).

[21] First, I am persuaded that the RAD conducted its own analysis and that it applied the appropriate standard of review (*Huruglica*). The RAD also stated that it disagreed with the RPD on two points: first, when it found that the RPD was incorrect in finding that there was no evidence that Mr. Singh owned a taxi and instead determined that the evidence in this regard was insufficient; and second, when it indicated that it was less concerned than the RPD by the omission of a fact in the clerk’s letter and that, consequently, it had not drawn a negative inference from this.

[22] Furthermore, I am generally persuaded that the contradictions, inconsistencies and implausibilities highlighted by the RAD are supported by the evidence on record and, particularly, that it was reasonable for the RAD to conclude that there was insufficient evidence to prove the fact that Mr. Singh owned a taxi, a key element of his claim. As pointed out by the Justice Gascon, “an administrative tribunal may base its conclusions on rationality and common

sense and make negative inferences if there is no documentary evidence to support an allegation, when one might have expected some (Shahamati at para 2; *Saliaj v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1247 at para 53)” (*Kifungo v Canada (Citizenship and Immigration)*, 2016 FC 599 at para 26). In the case at bar, and central to the review of the application, it was reasonable for the RAD to expect that documents related to the operation of a taxi would be presented and for it to draw a negative inference.

[23] The RAD’s decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law; having regard to the record, it is reasonable.

JUDGMENT in IMM-1957-19

THIS COURT'S JUDGMENT is that:

- 1) The application for judicial review is dismissed;
- 2) No question is certified.

"Martine St-Louis"
Judge

Certified true translation
This 18th day of November, 2019.
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1957-19

STYLE OF CAUSE: JASWINDER SINGH v. CANADA (MINISTER OF
CITIZENSHIP AND IMMIGRATION)

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 30, 2019

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: NOVEMBER 4, 2019

APPEARANCES:

Meryam Haddad

FOR THE APPLIANT

Sherry Rafai Far

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Meryam Haddad
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT