

B E T W E E N:

KASHMEER SINGH MANDAR

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

REED, J.:

I have been persuaded that the decision under review must be set aside. At the commencement of the hearing of the applicant's claim for refugee status, the panel of the Convention Refugee Determination Division of the Immigration and Refugee Board indicated that the applicant's identity was not an issue. I quote from the transcript:

COUNSEL [for the applicant] Well, I don't know if identify is going to be an issue. There is at least two pieces of identity documents. I'll leave that to you. I really don't see identity as an issue. Now, the claimant is from a neighbouring state to Punjab where traditionally most of the Sikhs live, so I.. and he has attempted to live in both these states, Rajasthan and Punjab. I don't see IFA as an issue, but I think there is something unusual in the fact that Mr. Mandar is a minority from the state of Punjab itself and I think probably it would be appropriate to find out if he could go back to either Punjab or Rajasthan today and what the nature of his fear is. I don't see anything else as an issue.

TURLEY [presiding member] Ms. Park?

RCO I would add the possibility of Delhi as an IFA as the claimant indicated that he spent an unknown period of time in

Delhi. It's not clear from the PIF how long he was there. And there are.. credibility may arise as an issue in the course of the hearing and I bring it up specifically in relation to some items in the port of entry notes.

TURLEY

Mr. Berman?

BERMAN [panel member] In terms of identity we have identity documents so at this point identity wouldn't seem to be an issue. Thank you. Principle issue of course is the claimant's credibility.

As the hearing progressed questions were posed concerning one of the documents that the applicant had produced to prove his identity - his driver's licence. Questions also arose concerning the date on which he entered Canada. A photograph that formed part of his file carried a stamp indicating it had been taken by a photographer in Malton, Ontario, on October 27, 1994. The applicant claimed to have entered Canada on November 3, 1994. At the end of the hearing, when making submissions with respect to the evidence the RCO stated:

The following issues were raised at the outset of the hearing, credibility, internal flight alternative and the well-foundedness of the claim. It was stated at the outset that identity wasn't an issue, but I raise it as an issue as it is linked to my credibility submissions with respect to the documents provided by the claimant.

The panel did not confirm that identity was now an issue. Counsel for the applicant did not address this issue nor seek to submit further evidence with respect to the applicant's identity. (The record indicates that the applicant has a brother in Canada.)

In rendering its decision, the panel concluded that it had concerns about the claimant's credibility and identified several aspects of the evidence as being the source of those concerns. The panel concluded:

The claimant was unable to provide any identity document which did not raise questions about whether it actually belonged to him. The panel gives little weight to Exhibits C-2 and C-3.

....

The onus of proof is on the claimant with respect to identity. He has failed to satisfy that onus even on a balance of probabilities.

I have concluded that the applicant was not given adequate notice that his identity was in issue. The panel, at the outset of the hearing, indicated that it was not. The R.C.O., at the end of the hearing, indicated that in his view it had become one. The panel did not endorse this assertion. Applicant's counsel was entitled to assume that it

was still not an issue and that he did not need apply to reopen the hearing for the submission of further evidence with respect to identity.

There are, as well, some difficulties with the factual findings of the panel concerning identity. These probably arise because identity was not addressed as an issue. The panel refers to exhibits C-2 and C-3, the applicant's driver's licence and his birth certificate. The applicant was questioned about his driver's licence because it showed a permanent residence address different from where the claimant stated he lived. His explanation for this discrepancy was a matter the panel could legitimately believe or not. However, the panel gave no reason for disbelieving the birth certificate.

The RCO in making submissions to the panel stated that the birth certificate should be discredited because it contained no picture of the applicant and because it was an English translation. These appear to be dubious assertions. One has to ask whether it is usual for birth certificates of this type to carry a picture of the individual. Secondly, the document does not purport to be an English translation. It is issued in English but the applicant had no opportunity, given the lack of questioning about the authenticity of the document during the hearing, to explain whether or not birth certificates issued in India may be issued in English.

In any event, one cannot assume that the panel accepted the RCO's submissions. The panel gave no reasons for giving little weight to the birth certificate. It seems to have simply ignored that document.

For the reasons given the decision under review is set aside and the claim referred back for rehearing by a differently constituted panel.

"B. Reed"
Judge

Toronto, Ontario
October 3, 1997

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: IMM-4605-96

STYLE OF CAUSE: KASHMEER SINGH MANDAR

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

DATE OF HEARING: OCTOBER 3, 1997

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR ORDER BY: REED, J.

DATED: OCTOBER 3, 1997

APPEARANCES:

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FEDERAL COURT OF CANADA

Court No.: IMM-4605-96

Between:

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