

Federal Court



Cour fédérale

Date: 20231130

Docket: IMM-8958-22

Citation: 2023 FC 1611

Montréal, Quebec, November 30, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

MALAK SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Singh seeks judicial review of the denial of his refugee claim. His claim was based on persecution at the hands of the police in India, in particular his arbitrary arrest and detention in October 2017. The Refugee Appeal Division [RAD] found that his testimony was not credible. Moreover, the RAD gave no weight to corroborating documents.

[2] The RAD relied on three reasons to find that Mr. Singh's credibility was affected: (1) in his visa application, he failed to disclose that he had been arrested; (2) there was a contradiction between the various forms as to the precise date of his detention; and (3) he failed to mention in his Basis of Claim [BOC] form that he feared political leaders. In my view, the RAD erred with respect to each of these three issues and these errors cumulatively render the decision unreasonable.

[3] The first reason the RAD invoked when assessing Mr. Singh's credibility is the fact that he failed to disclose his detention when he applied for a visa to come to Canada. This statement, however, was made in the process of seeking refuge in Canada and should not be held against Mr. Singh: *Fajardo v Canada (Minister of Employment and Immigration)* (1993), 157 NR 392 (FCA).

[4] The second reason is the discrepancy regarding the dates of detention between the BOC form and the attached narrative, on the one hand, and the Schedule A and Schedule 12 forms, on the other hand. The RAD rejected Mr. Singh's explanation that the discrepancy likely resulted from an error made by the interpreter, in particular because the length of the detention would be one day or three days, depending on which form is considered.

[5] In the narrative attached to the BOC form, Mr. Singh states that he was arrested on October 10, 2017 and released on October 13, 2017. On the Schedule A form, below the statement that Mr. Singh was illegally detained and falsely accused, there is a handwritten annotation "13-10-2017 14-10-2017." There is also a typewritten note referring to his narrative.

On the Schedule 12 form, under the question “period detained”, there are handwritten annotations, “2017-10-14” in the box “from,” and “2017-10-13” in the box “to.” Under the question “why”, it is indicated “see attached narrative.” All the forms were signed on the same date, July 16, 2018. Prior to the hearing before the RPD, Mr. Singh’s counsel sent a letter asking that the forms be corrected so that the period of detention reads from October 10, 2017 to October 13, 2017.

[6] In my view, it was unreasonable to base a negative credibility finding on what appears to be nothing more than a clerical mistake. It is obvious that the forms were part of a single package and that the key document was the narrative. The person who filled the forms on Mr. Singh’s behalf made a mistake when filling the various fields. One cannot expect Mr. Singh to be able to say why that person made a clerical error. There is often no meaningful explanation for clerical mistakes. Neither can one expect Mr. Singh to catch this error, as he depended on an interpreter to understand the forms. Simply put, clerical mistakes do occur and they should not be the sole basis for rejecting a claim for asylum.

[7] Moreover, it appears that the RAD overlooked the fact that Mr. Singh made a correction to the forms before the RPD hearing. At paragraph 20 of its decision, the RAD states that the RPD hearing took place four years after the forms were signed, that Mr. Singh was represented by a lawyer and that “he had ample time to review his documents and make any corrections.” Yet, this is exactly what Mr. Singh did.

[8] Third, the RAD faulted Mr. Singh for testifying that he feared unnamed political leaders who are opposed to Sikhs, while this was not explicitly mentioned in his BOC narrative. This is unreasonable, because it is based on a purely literal reading of the narrative. Mr. Singh alleges that he was persecuted because of his association with persons who were involved in the SAD-A party and who were sought by the police for that reason. It does not require great perspicacity to understand that the backdrop to Mr. Singh's narrative of persecution is the conflict between Sikh activists, on the one hand, and the national government and police forces, on the other hand. Thus, in expressing a fear of political leaders, Mr. Singh was simply referring to this well-known conflict. He was not asserting a new basis of persecution not disclosed in his BOC form.

[9] In sum, the RAD made an unreasonable decision by focusing on trivial matters to undermine Mr. Singh's credibility.

[10] Given this conclusion, I do not need to review the RAD's treatment of Mr. Singh's documentary evidence.

[11] For these reasons, I am allowing Mr. Singh's application for judicial review.

JUDGMENT in IMM-8958-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.
2. The decision made by the Refugee Appeal Division regarding the applicant is quashed.
3. The matter is remitted to a different member of the Refugee Appeal Division for reconsideration.
4. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8958-22

STYLE OF CAUSE: MALAK SINGH v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 30, 2023

JUDGMENT AND REASONS: GRAMMOND J.

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