

**Date: 20061026**

**Docket: IMM-1163-06**

**Citation: 2006 FC 1271**

**Ottawa, Ontario, October 26, 2006**

**Present: The Honourable Mr. Justice Shore**

**BETWEEN:**

**RESHAM SINGH**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] In an application for judicial review on issues of credibility, the appropriate standard of review is that of patent unreasonableness. The Court must show great deference because it is the Board's place to weigh claimants' testimony and assess their credibility. If the Board's findings are reasonable, there is no basis to intervene.

## **NATURE OF JUDICIAL PROCEEDING**

[2] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (Board), dated February 7, 2006, that the applicant is not a “Convention refugee” or a “person in need of protection” pursuant to sections 96 and 97 of the Act.

## **FACTS**

[3] The applicant, Resham Singh, alleged the following facts:

[4] Mr. Singh, 40 years old, is a Jatt Sikh. He was born in Chokoran, a village located next to the province of Punjab in India. His immediate family still lives there. During his studies at college in Ropar in the 1980s, Mr. Singh met individual members of the “All India Sikh Student Federation” (AISSF). Mr. Singh was not a member and did not attend the AISSF meetings. However, he had several discussions with members of the Federation regarding the importance of the independence of Khalistan.

[5] On August 5, 1989, Mr. Singh was arrested, beaten and detained by the Indian authorities until March 1991. No charges were filed against him. The authorities questioned him on several occasions, unsuccessfully, regarding his connection with the AISSF.

[6] On November 7, 1991, following this incident, Mr. Singh, fearing for his life, fled to Afghanistan. However, given the prevailing instability in that country at the time, he quickly

returned to India. On his return, the authorities searched his house several times. Mr. Singh was once again detained.

[7] On June 1, 1992, Mr. Singh left India to live in Russia, Germany and the United Kingdom. In the latter two countries he filed refugee claims, which were refused. He was detained in the United Kingdom for 15 months.

[8] On January 5, 1996, Mr. Singh was deported from the United Kingdom and removed to India. Shortly after his return, he was again detained and beaten by the Punjabi authorities. On this occasion, Mr. Singh was also tortured. He was hospitalized for the treatment of his injuries. When he was discharged from the hospital, Mr. Singh hid from the authorities and went to live with friends.

[9] On August 27, 1998, Mr. Singh left India for the last time. In a six-year period, he travelled through four countries (Russia, Greece, Italy and the Netherlands), living and working illegally under different identities. He did not file any refugee claims in these countries.

[10] On September 21, 2004, Mr. Singh left the Netherlands and arrived in Canada. With a false German passport in hand and alleging he was a citizen of the Netherlands, he attempted to enter the country illegally. Confronted by the immigration officer, Mr. Singh admitted his true identity and claimed refugee status.

[11] Mr. Singh sought asylum based on his Sikh nationality, his membership in a particular social group of young Sikh men and perceived political opinion. He said that he feared the Indian authorities who suspected that he was a Sikh militant and who tortured him for that reason.

### **IMPUGNED DECISION**

[12] The Board determined that Mr. Singh was not a “Convention refugee” or a “person in need of protection” under sections 96 and 97 of the Act, after finding that his testimony was not credible. This finding was based on many inconsistencies in Mr. Singh’s testimony as well as in his conduct before his arrival in Canada.

### **ISSUE**

[13] Did the Board make a patently unreasonable error in deciding that Mr. Singh was not credible?

### **STANDARD OF REVIEW**

[14] The assessment of witnesses’ credibility and weighing the evidence falls under the Board’s jurisdiction. The Board has a well established expertise in deciding questions of fact and, specifically, in assessing the credibility of refugee claimants as well as their subjective fear of persecution: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (QL), at paragraph 14.

[15] In the context of an application for judicial review bearing on credibility issues, the standard of review that should be applied is that of patent unreasonableness. The Court must show great

deference since it is the Board's place to weigh the testimony of claimants and to assess their credibility. If the Board's findings are reasonable, there is no basis to intervene. However, the Board's decision must be supported by the evidence; it cannot be made arbitrarily while relying on erroneous findings of fact or disregarding evidence filed: *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, [2005] S.C.J. No. 39 (QL), at paragraph 38; *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (QL), at paragraph 4.

## **ANALYSIS**

### **1. Inconsistencies and significant implausibilities in Mr. Singh's testimony**

[16] Mr. Singh argued that the Board's findings of fact were erratic or unsupported by the evidence. In his opinion, the Board erred on four points:

- (1) The Panel mistakenly believed that the applicant returned to his village after being deported from the United Kingdom in January 1996 and did not ask him any questions about his place of residence before he was again arrested by the Indian authorities in July 1996;
- (2) The Panel did not question Mr. Singh about how he financed his trip to Canada;
- (3) The Panel did not question Mr. Singh about how he obtained his Indian passport in the Netherlands;
- (4) The panel erred in examining Mr. Singh's previous conduct (the fact that after 1998 he passed through various countries all signatories to the Convention, without however claiming refugee status); and the fact that he attempted to conceal his identity when he arrived in Canada to support its negative credibility finding.

After reviewing the documentary evidence and the transcript, the Court is of the opinion that the Board reasonably relied on the evidence. The Board properly supported its decision by giving detailed explanations and by addressing the crux of the applicant's claim.

[17] Contrary to the applicant's allegations, the Board questioned Mr. Singh about his detention in the United Kingdom (pages 28-30 of the hearing transcript); about his arrest of July 7, 1996, when he returned to India (page 31 of the hearing transcript); about his place of residence when he returned to India (page 31 of the hearing transcript); about the torture that he allegedly suffered at the hands of the Indian authorities; as well as about where he hid after this incident between 1996 and 1998 (pages 32-37 of the hearing transcript). On this last point, this is what was said:

Q. So now for the following two years you say you lived underground. What does that mean?

A. Then my (sic) that duty was to save myself from police. That's why I remained underground.

Q. But I don't know what that means, sir. When you say I lived underground means what?

A. I mean to say that I remained in hiding. I never went to see my family or to police.

Q. Okay, where were you in hiding?

A. With one of my friend.

[18] Further, the Board questioned Mr. Singh about the financing of his trip to Canada (pages 35-36 of the hearing transcript); about obtaining his Indian passport (pages 20-21, and 38-43 of the hearing transcript); and, finally, about his entry into Canada (page 42 of the hearing transcript).

[19] In *Aguebor, supra*, the Federal Court of Appeal pointed out that powers to intervene are limited in regard to determinations impugning the truthfulness of a story.

[20] Indeed, while there is a presumption to the effect that any testimony given under oath is presumed to be true, it is the Board's place to assess the truthfulness of a claimant's story and to make the proper determinations. The Board is independent and it has the responsibility of deciding the applicant's credibility.

[21] In fact, the Board identified significant inconsistencies and implausibilities in the applicant's testimony. Namely, *inter alia*:

- The applicant, a citizen of India, arrived in Canada with a false German passport, alleging that he was a citizen of Holland; it was not until he was confronted by Citizenship and Immigration Canada that he admitted his true identity and claimed refugee status; (pages 47, 49, 108, 161-162, tribunal's certified record)
- The panel also noted that the applicant, before coming to Canada, had travelled through at least four (4) countries in the previous four (4) years; (page 146 tribunal's certified record)
- When confronted, the applicant claimed that he feared being deported to India; the panel could not give credence to this explanation, saying "this is an experienced traveller who has been doing this regularly. The fact that the claimant attempted to conceal his identity again when arriving in Canada affects, in the panel's mind, his overall credibility." (page 6, tribunal's certified record)
- Indeed, although he alleged that he had been detained for more than a year and a half between 1989 and 1991, and that he had fled Afghanistan, claiming that he feared for his life, the applicant nonetheless then came back to his village; (pages 137-138 and 140 tribunal's certified record)

- The applicant then left his country once again to live in Russia, in Germany and then in England. He filed refugee claims in the latter two countries, which were refused, but he did not submit any documents indicating the reasons underlying these refusals or the grounds on which his claim was founded; (pages 144-146, tribunal's certified record)
- The applicant was deported from England and removed to India; the panel indicated that the applicant went back to his village; (pages 150-151, tribunal's certified record)
- The panel also noted that the applicant had also waited two (2) years before leaving the country; (page 166, tribunal's certified record)
- The panel also noted that the applicant, when he left India for the last time, did so with his own passport; page 22 of the applicant's record indicates that this passport bore his own name; regardless of how the applicant obtained this document, it is odd to say the least, under the circumstances, that the applicant, who said that he is wanted, attempted to and could have left the country with a passport made in his name; (pages 157-158, certified tribunal record)
- The panel took into consideration the fact that applicant had travelled after 1998 through different countries which were all signatories of the Convention, without however claiming refugee status; the applicant, who is alleging at paragraph 11 of his affidavit that he always stated that he was afraid to be removed to India, nevertheless took a significant risk of staying and working under false identities in four (4) different countries; (pages 49-50, 65, 156 to 160, tribunal's certified record)
- Finally, the panel noted that the applicant had not submitted any medical evidence supporting his allegation to the effect that he had been beaten during the alleged detention in July 1996. (page 153, tribunal's certified record)



[22] The Board did not err in identifying the inconsistencies, the omissions and the implausibilities in the testimony of Mr. Singh. The Board therefore had to dismiss the applicant's claim. In fact, according to Mr. Justice James Hugessen of the Federal Court of Appeal in *Canada (Minister of Employment and Immigration) v. Dan-Ash*, [1988] F.C.J. No. 571 (QL):

... unless one is prepared to postulate (and accept) unlimited credulity on the part of the Board, there must come a point at which a witness's contradictions will move even the most generous trier of fact to reject his evidence.

[23] Accordingly, the Board's determinations are not patently unreasonable.

## **2. The affidavit of the Sarpanch**

[24] Mr. Singh alleged that the Board did not assign any probative value to the Sarpanch's affidavit which, in his opinion confirmed the events that took place in July 1996.

[25] On this point, the Board stated as follows:

With respect to the claimant's previous refugee protection claims (England, Germany), the claimant was unable to provide the panel with any documentation or details concerning the reasons of his applications or the refusals. This again, in the panel's mind, affects the overall credibility of his allegations. Despite alleging that he was hospitalized for what appears to be serious issues following his beating and detention in July 1996, the claimant provides no medical evidence to support this allegation. In fact the only documentation the claimant provided would have been an affidavit from a local Sarpanch. In the circumstances, the panel does not believe that the claimant has provided credible or plausible evidence to support his claim.

[26] The Board need not remark on each of the documents filed if, in light of the evidence, the logic of the decision is understood (*Liman*). In fact, Mr. Justice Paul Rouleau states, in *Songue v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1020, at paragraphs 12-13:

... The Refugee Division need not specifically mention that it is rejecting a piece of documentary evidence when it does not believe the circumstances that are said to have given rise to that evidence.

Tremblay-Lamer J. has stated the following on this point:

As to the Board's credibility finding about the male applicant's political activities in the United States, the applicants' main argument seems to be that the Board provided no explanation for assigning "no probative value" to a letter issued by the DUP in the U.S. regarding the male applicant's political activities. Considering the Board's finding that it was implausible that the male applicant would continue high profile activities against the government of Sudan while living illegally in the U.S. and while his wife was still in Sudan, the Board was entitled to give no weight to that letter. The fact that he is a member of the DUP does not indicate that he has high profile activities against the government. [see *Ali v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 558, IMM-2402-95, April 25, 1996 (F.C.T.D.), at p. 7.]

[27] Accordingly, the Board's analysis was reasonable and does not justify the intervention of this Court.

### **3. The Board's findings on the objective situation in Punjab**

[28] Mr. Singh stated that the Board erred in basing his fear of persecution on his association with the AISSF. Further, according to Mr. Singh, the Board erred by failing to take into account the fact that the Indian authorities wanted Mr. Singh for different reasons, *inter alia* as a result of his various stays outside his native country.

[29] In its reasons, the Board noted in *obiter dicta* that even if the alleged facts were true, it was not plausible that Mr. Singh would now be wanted in Punjab. The Board based its finding on the following reasons:

Finally, there is the issue of the objective situation. According to the claimant he would have been targeted as an associate of individuals involved with the AISSF in the late 1980s. The claimant would have left India and returned in 1996. According to the claimant, he is still in some way wanted by the Indian authorities as an associate of "militants". Yet what is known is that the situation has dramatically changed in the Punjab . . . Thus the panel does not believe that this claimant is telling the truth.

[30] This finding regarding the lack of objective basis for the claim is not determinative since the Board already had enough reasons for doubting Mr. Singh's credibility. The Board did not have to

grant refugee status based solely on the documentary evidence regarding the situation in India. However, the Board nevertheless took the documentary evidence into consideration.

[31] First, a review of the hearing transcript reveals that the Board confirmed that Mr. Singh had been arrested by the Indian authorities on January 5, 1989, based on the report of his friend, Diljit Singh, member of the AISSF:

Q. So why don't we back up to determine when did you first begin to have problems in India?

A. First time I was arrested in, on 5th of January 1989.

- Nineteen-eighty-nine, okay.

Q. And why were you arrested on the 5th of January 1989, sir?

A. Because my friend was arrest . . . Diljit Singh was arrested in November in 88

...

Q. What does that have to do with you?

A. He was my college mate and he was a member of Sikh movement.

Q. Member of Sikh movement. Could you be a bit more specific, sir?

A. All India Sikh Student Federation.

- So he was a member of the A.I.S.S.F.

...

Q. All right, so let's go back a bit if we can, and you said you weren't part of any particular movement but you would have from time to time discuss the future of Khalistan, as you would describe it, with your friends. Is that correct?

A. Yes

- Okay

Q. So at some point in time a friend of yours was arrested, and then you began to have problems with the authorities?

A. Yes

Q. So what problem did you have with the authorities?

A. Because once police arrests somebody who belongs to any movement, they try to . . . then they start looking for his friends as well so that they can completely finish this organization.

[32] Then the Board took into account the fact that Mr. Singh lived in hiding from 1996 to 1998 (pages 32-37 of the hearing transcript).

[33] Finally, the Board considered the following documentary evidence (UNHCR):

Controls on arrival

UNHCR observed that judging by their general information on Indians who returned after having their asylum applications abroad rejected returnees did not have problems if they returned with valid travel documents and if their departure had also taken place with valid travel documents. Those who had not complied with Indian laws on leaving and arriving in India (note 45) might be prosecuted. According to the Passport Act the maximum punishment was two years' imprisonment or a fine of a maximum of 5000 rupees (approx. DKK 800)

According to the UNHCR, refused Indian asylum seekers who returned to India with temporary travel documents could enter without any problems as such, but if they arrived after their passport had expired then they would be questioned about the reasons for this. These arrivals were questioned briefly and could then leave the airport. If the fact that the person returning had applied for asylum/refugee status abroad had not come to the knowledge of the Indian immigration authorities then he would not attract any particular attention other than prosecution for breaking the passport law.

The UNHCR also remarked that in cases where the Indian authorities became aware that the person returning had been refused asylum, it was likely that the immigration authorities would detain the person in question briefly for questioning and then release him, unless he aroused their suspicion by his behaviour or was being sought by the Indian security services. Those in the latter group would be thoroughly questioned and if they were wanted, would be handed over to the security force in question. According to information available to the UNHCR, such questioning in international airports had not led to the use of violence ( . . . )

However, it would not be seen as an offence to have sought asylum in another country unless the person in question had connections with a terrorist group or a separatist movement and could be connected with activities which might damage India's sovereignty, integrity or security, or activities which might have a harmful effect on India's relations with other countries.

[34] The Board could not read this evidence in the abstract without taking into account Mr. Singh's testimony. Mr. Singh's lack of credibility was determinative in this case.

[35] In the context where we cannot believe Mr. Singh's allegations, we cannot find that Mr. Singh faces a risk if he is removed to India, in light of the documentary evidence alone.

[36] In *Singh v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1505, [2004] F.C.J. No. 1818 (QL), at paragraphs 8 to 10, Mr. Justice Sean Harrington stated the following:

. . . I cannot agree. There is nothing to rebut the presumption the Board considered and weighed all the evidence (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (FCA)).

It was submitted that this case differs from the decision of the Court of Appeal in *Valentin v. Canada (Minister of Employment and Immigration)* (FCA), [1991] 3 F.C. 390. That case held that one could not create one's own refugee claim by leaving one's country of origin without authorization.

*Valentin* was recently considered in the context of section 97 of the Act by Kelen J. in *Zandi v. Canada (Minister of Employment and Immigration)* 2004 FC 411 (CanLII), 2004 FC 411, [2004] F.C.J. No. 503 (QL). He said at paragraph 10:

To paraphrase the Federal Court of Appeal in *Valentin, supra*, a defector cannot gain legal status in Canada under IRPA by creating a "need for protection" under section 97 of IRPA by freely, of their own accord and with no reason, making themselves liable to punishment by violating a law of general application in their home country about complying with exit visas, i.e. returning.

I agree.

(*Kaur v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1293, [2003] F.C.J. No. 1635 (QL); *Sidhu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 39, [2004] F.C.J. No. 30 (QL).)

[37] The intervention of this Court is therefore not justified.

## CONCLUSION

[38] For all of these reasons, the Board did not make a patently unreasonable error in deciding that Mr. Singh was not credible. The application for judicial review is therefore dismissed.

**JUDGMENT**

**THE COURT ORDERS that**

1. The application for judicial application;
2. No serious question of general importance will be certified.

“Michel M.J. Shore”

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Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

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

**DOCKET:** IMM-1163-06

**STYLE OF CAUSE:** RESHAM SINGH  
V. MINISTER OF CITIZENSHIP  
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**PLACE OF HEARING:** Montréal, Quebec

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**DATE OF REASONS:** October 26, 2006

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