Date: 20070123

Docket: IMM-3209-06

Citation: 2007 FC 67

Ottawa, Ontario, January 23, 2007

PRESENT: THE HONOURABLE MR. JUSTICE BEAUDRY

BETWEEN:

KULDEEP SINGH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated May 26, 2006. The panel ruled that the applicant was not a Convention refugee or a person in need of protection because he could have availed himself of an internal flight alternative (IFA) in India.

I. Issue

[2] Was it patently unreasonable for the panel to find that an IFA existed for the applicant?

[3] For the reasons that follow, I answer the above question in the affirmative. Accordingly, this application for judicial review will be allowed.

II. Factual Background

[4] The applicant is Sikh and was born in the Punjab, in India, on April 13, 1977. He left his country on August 19, 2005 and claimed refugee status in Canada on August 23, 2005.

[5] He alleges that he was arrested and tortured by police in January 2004 because he had helped a Sikh militant. He suffered the same fate two other times, in October 2004 and June 2005. After each arrest, he had to pay, respectively, the sums of 25,000, 30,000 and 50,000 rupees.

[6] The applicant fears the authorities in his country because the police in his region accuse him of being linked to terrorists. He hid for a number of days in New Delhi. Since leaving for Canada, he has learned that his father was arrested and tortured and that his wife was raped. They all fled and settled in the province of Haryana.

III. Impugned Decision

[7] The panel rejected the refugee protection claim because the applicant failed to establish a nexus between the alleged fear and any of the Convention grounds and because the applicant could have availed himself of an internal flight alternative in his country.

IV. Analysis

Standard of Review

[8] The Federal Court has dealt on several occasions with the question of which standard of review to apply in IFA cases. In *Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999, [2003] F.C.J. no. 1263 (F.C.) (QL), Judith Snider J. wrote as follows at paragraphs 9 to 11:

> What standard has the Court applied in similar situations? Two recent decisions of this Court, while not explicitly carrying out a pragmatic and functional analysis, concluded that the review of a Board's IFA findings is patent unreasonableness (*Ali* v. *Canada (Minister of Citizenship and Immigration)*, 2001 FCT 193, [2001] F.C.J. No. 361 (QL); *Ramachanthran* v. *Canada (Minister of Citizenship and Immigration)* , 2003 FCT 673, [2003] F.C.J. No. 878 (QL)).
>
> I also note that in *Singh* v. *Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1283 (T.D.) (QL), Tremblay-Lamer J. conducted an analysis based on the pragmatic and functional approach in order to determine the standard of review of the Board's determination regarding whether the Applicant would face persecution if he returned to India. Her conclusion was that the appropriate standard is patent unreasonableness. As indicated above, the notion of IFA is inherent in this determination.
>
> Based on the jurisprudence and the pragmatic and functional analysis conducted in *Singh, supra*, I am of the view that the appropriate standard of review of patent unreasonableness. However, I note that the Board must apply the proper test in determining whether an IFA exists (*Thirunavukkarasu, supra*). If the Board fails to do so, that will be a reviewable error.

[9] I adopt that analysis in the case before me. I will not intervene unless the applicant can demonstrate a patently unreasonable error in the panel's decision.

Was it patently unreasonable for the panel to find that the applicant disposed of an IFA?

[10] The applicant alleges that Sikhs who have survived human rights violations cannot live in safety anywhere in India. He also emphasized that the panel admitted that he would be at risk in his region because the police had certain reasons to believe that he had conspired with a terrorist. He adds that it was patently unreasonable to ignore that significant fact and to find that the applicant would be able to avail himself of an internal flight alternative.

[11] On the other hand, the respondent argues that not only has the applicant not demonstrated the existence of a nexus between his fears of persecution and one of the five enumerated grounds of the Convention, but also that he is not wanted by the authorities as an accomplice of a terrorist. The applicant was merely a victim of local police extortion. Thus, he could have easily left his village and, like the rest of his family, settled elsewhere without risk of being hunted and persecuted. Furthermore, the defendant points out that [TRANSLATION] "the Constitution of India guarantees its citizens freedom of movement and that only a few high profile militants are in danger of being detected if they settle in India."

[12] However, it is important to note that the credibility of the applicant is not in issue here. At page 2 of the decision, under the heading "Credibility," we read as follows:

> […] Still, despite these doubts and others, we will base our analysis on the facts given by the claimant in his Personal Information Form (PIF) and in his testimony.

[13] In his Personal Information Form, the applicant gave details of his fear of being returned to his country. In particular, he explained that the police accused him of having worked with militants,

and that he was interrogated about a certain Hawara. The documentary evidence filed by the applicant confirms that this person is a militant and a kingpin of the BKI, a group that has tried to revive terrorism in the Punjab.

[14] The panel did not sufficiently address the issue of the applicant's fear with respect to the events linking him to Hawara and the negative consequences for him. If, indeed, the applicant's story were found to be accurate, the panel had a duty to examine the documentary evidence about people who conspire with militants; that was not done. These issues are at the very heart of the applicant's claim. This error warrants the intervention of the Court (*Jawaid v. Canada (Minister of Citizenship and Immigration),* 2003 FCT 220, [2003] F.C.J. no. 305 (QL)).

[15] At the hearing, the applicant stated through his counsel that he had no objection to the matter being referred back to the same panel.

[16] The parties did not submit any question to be certified.

JUDGMENT

THE COURT ORDERS that the application for judicial review be allowed. The matter is referred back to the same panel for redetermination in the light of these reasons. There is no question to be certified.

"Michel Beaudry"
Judge

Certified true translation
François Brunet, LLB, BCL

FEDERAL COURT

SOLICITORS OF RECORD

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