

**Date: 20070323**

**Docket: IMM-4620-06**

**Citation: 2007 FC 309**

**Ottawa, Ontario, March 23, 2007**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**KULWANT SINGH SHADHRA**

**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 the decision of Michael Crelinsten, of the Refugee Protection Division (the panel), dated July 26, 2006. The panel determined that the applicant was not a “Convention refugee” or a “person in need of protection”, since he had an internal flight alternative (IFA) in India.

## **ISSUE**

[2] Is the panel's decision patently unreasonable?

[3] The answer to this question is affirmative. As a result, the application for judicial review will be allowed.

## **FACTUAL BACKGROUND**

[4] Born in India on June 12, 1976, the applicant is a Sikh from the state of Uttar Pradesh. He arrived in Toronto on January 23, 2005, and claimed refugee status the same day.

[5] The applicant alleges he was arrested and tortured by police in India on two different occasions. According to the applicant, the first time, on August 12, 2003, he was interrogated and tortured and released four days later after a bribe was paid. The police took his fingerprints and photograph and forced him to sign blank pages. Following these incidents, the applicant had to seek medical attention for his injuries. He unsuccessfully attempted to leave India with the help of a smuggler.

[6] On May 29, 2004, the police went to the applicant's home looking for his eldest brother. The applicant was arrested again, interrogated and beaten. He was released on June 7, 2004, after a bribe was paid. He was again hospitalized and treated.

[7] After he was released, he was required to report to the police every month. Fearing the worst, he chose not to comply with this condition. He decided to flee the family home and find

refuge in Sikh temples. He lived this way for seven months, until he left for Canada in January 2005.

[8] The applicant alleges that his father was arrested and tortured on April 16, 2005, after the latter allegedly complained to the police superintendent concerning the harassment he and his sons were supposedly subjected to. The police purportedly went to his parents' home at least once a month to try to find him and his eldest brother.

[9] The applicant submitted a letter from Jeevan Jyoti Health Center & Hospital (P-6), where he was treated twice for injuries inflicted by the police. The letter reports the treatment given immediately following the incidents of torture. The doctor wrote:

Both times, he was treated as an indoor patient for a day and was further treated at home. The patient was suffering from same types of swellings, pain, contusions and bruises (*sic*) spread all over his body. The patient alleged this problem due to beating in police custody.

[10] The applicant also submitted a letter from Dr. Vincenzo Colavincenzo (P-17), of the Clinique de médecine familiale de Lasalle, in Quebec, where he has been treated since April 2005 for the following problems:

I met this gentleman seven times since the month of April 2005 and he reported physical and psychological problems that were allegedly connected to the experiences of fear and violence while living in India. He stated that he was a victim of police harassment, false accusations and physical assaults that traumatized him and that were responsible for leaving his country. . . .

[11] The applicant's file also includes an affidavit from Gurmeet Singh, Sarpanch of Kajri Niranjapur, Tehsil Purnapur, Uttar Pradesh, India, the applicant's village (P-3). The Sarpanch's letter, dated July 20, 2005, indicates:

1. . . . Kulwant Singh Shadhra son of Sh. Ajmer Singh Shadhra and his family are residents of my village. I am well known to their problems due to the police.
2. That the police illegally arrested and tortured Ajmer Singh's other son Manjit Singh because militants took help from them. Police tortured him and linked him with militants.
3. That police again arrested and tortured Manjit Singh. He left home and went in hiding. According to his family his whereabouts are not known.
4. That the police illegally arrested Kulwant Singh two times to find his brother and others. Police tortured him badly.
5. That Kulwant Singh also left home and started to live in hiding to save his skin.
6. That the village council and I helped this family all times and this family paid bribe to the police.
7. That Kulwant Singh left his country because of the fear of Police arrests and tortures. Police also arrested Ajmer Singh because he complained against police and also approached prass (sic) to get help.
8. That the life of Kulwant Singh is not very safe in India and therefore he cannot be advised to come back. Police still comes and harassed Ajmer Singh and family. . . .

[Emphasis added]

[12] The panel made a negative decision on July 26, 2006. This is the decision being challenged here.

### **IMPUGNED DECISION**

[13] After considering all the evidence and applicant's testimony, the panel determined that the applicant was not a Convention refugee or a person in need of protection, since his return to India would not subject him to a reasonable fear of persecution, to a risk to his life or a risk of cruel and

unusual treatment. The panel based this determination on the fact that the applicant has an internal flight alternative.

## **ANALYSIS**

### ***Standard of review***

[14] The standard of review applicable to pure questions of fact is patent unreasonableness (*Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) (QL)).

[15] Although it considered his story to be slightly exaggerated, the panel did not doubt that the applicant had been arrested, detained and mistreated by the police. However, the panel was not convinced that the applicant was specifically targeted by the police.

[16] The panel concluded that the applicant had not provided reasonable explanations for a major omission in his Personal Information Form (PIF). In fact, the panel placed a lot of emphasis on the fact that the applicant did not amend his PIF to indicate that his father had been arrested and tortured in April 2005. It should be noted that the PIF is dated February 2005, about two months before his father was arrested.

[17] The panel thus came to a negative conclusion, determining that the applicant had not established on a balance of probabilities that the police had arrested and tortured his father. According to the decision, this omission significantly undermined the applicant's credibility.

[18] In coming to this conclusion, the panel stated as follows with respect to the Sarpanch's affidavit (page 4):

[T]he significance of this omission is reinforced by the omission of any reference, in exhibit P-4, an affidavit submitted by the sarpanch of the claimant's village, to the father's arrest. The panel notes that the affidavit was signed by the sarpanch on July 26, 2005 or well after the alleged arrest and torture of the claimant's father. He states that, "I am well known to their problems due to the police (sic)" but, nevertheless, makes no reference to the alleged arrest and torture of the claimant's father, which would have, allegedly, taken place merely two months previously. The panel concludes that this omission further detracts from the credibility of the claimant's allegations of police interest, on a forward looking basis, in either him or his father.

[19] However, in paragraph 7 of the Sarpanch's affidavit, he clearly states that the police arrested the applicant's father because he had made a complaint and had informed the press. The unchallenged newspaper article (P-5), on page 188 of the panel's file, corroborates the applicant's statements and the Sarpanch's affidavit.

[20] The Court is of the opinion that this is a patently unreasonable error, as the panel's conclusion is not remotely corroborated by the evidence.

[21] In the case at bar, at the hearing, and even before the applicant testified about the events surrounding his father's arrest in April 2005, the applicant's representative asked for the panel's permission to make a correction precisely to add this important piece of evidence to the claim. Referring to the stenographic notes, one can see that a discussion ensued and that this element is the root of the panel's negative decision.

[22] The intervention of this Court is necessary.

[23] The parties have not submitted any questions of general importance for certification and this case does not involve any.

**JUDGMENT**

**THE COURT RULES that** the application for judicial review be allowed. The matter is remitted for reconsideration before a differently constituted panel. No question of general importance is certified.

“Michel Beaudry”

---

Judge

Certified true translation  
Jason Oettel



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

**DOCKET:** IMM-4620-06

**STYLE OF CAUSE:** KULWANT SINGH SHADHRA and  
MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** March 20, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT BY** The Honourable Mr. Justice Beaudry

**DATED:** March 23, 2007

**APPEARANCES:**

Michel Le Brun FOR THE APPLICANT

Patricia Nobl FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Michel Le Brun FOR THE APPLICANT  
Montréal, Quebec

John Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec