Date: 20070503

Docket: IMM-5561-06

Citation: 2007 FC 485

Ottawa, Ontario, May 3, 2007

Present: The Honourable Mr. Justice Blais

BETWEEN:

LAKHMIR SINGH RANDHAWA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review filed pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), against a decision by the Immigration and Refugee Board (the Board) – Refugee Protection Division (the RPD) (the panel), dated September 20, 2006, dismissing the applicant's claim for refugee protection.

RELEVANT FACTS

[2] Lakhmir Singh Randhawa (the applicant) is a citizen of India who arrived in Canada on September 26, 2003, and asked for Canada's protection on January 5, 2004.

[3] The applicant stated that he was a Convention refugee because he had a well-founded fear of persecution based on his race, his religion and his perceived political opinion, and that he was a person in need of protection based on the fact that he would be subject to a risk of torture, a threat to his life or a risk of cruel and unusual treatment or punishment if he were to return to his native country. The events referred to in support of the applicant's refugee claim are essentially based on incidents of extortion and assault at the hands of Shiv Sena, a group of Hindu extremists, and unjustified arrests and assaults at the hands of the police.

[4] In his Personal Information Form (PIF), the applicant told of the 2002 kidnapping of his eldest son Ranjit Singh Randhawa, who had allegedly been released after a ransom had been paid. The applicant moreover stated in his PIF that after he arrived in Canada in 2003, he did not know of Ranjit's whereabouts. However, on February 23, 2006, i.e. two weeks after the scheduled hearing date before the Board, the refugee protection officer assigned to the matter was informed by the representative of the Minister of Public Safety and Emergency Preparedness that the Board had a file in the name of the applicant's son, Ranjit Singh Randhawa, and that he has continuously been in Canada since 1998. On March 22, 2006, the applicant's representative was informed that Ranjit Singh Randhawa's PIF and the other documents relating to his refugee claim would be filed in the applicant's record. On May 9, 2006, the applicant's representative submitted amendments to the applicant's PIF and to his written story, deleting the references to the fact that his eldest son's

whereabouts were unknown. It was not until the beginning of the hearing on May 26, 2006, that the applicant's representative asked that the name of the applicant's son be replaced by the name of his youngest son in the paragraph referring to the kidnapping and the ransom demand.

IMPUGNED DECISION

[5] In a decision dated September 20, 2006, the panel determined that the applicant was not credible and therefore that he was not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the Act. The panel also determined that the applicant's story was a fabrication and an attempt to mislead the panel.

ISSUES

[6] The issues in this application are the following:

(1) Did the panel err in assessing the evidence regarding the applicant's credibility?

(2) Did the panel err in its interpretation of the Act and the Regulations?

STANDARD OF REVIEW

[7] It is well settled in the case law that the appropriate standard for the judicial review of a decision by the Board varies according to the nature of the decision. For a question of law, the standard is that of correctness; for a question of fact, that of patent unreasonableness; and for a mixed question of fact and law, that of reasonableness. This approach was confirmed by the Supreme Court of Canada in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100.

[8] The first issue bears on the assessment of the evidence and the applicant's credibility. Since it is a question of fact, this Court must show deference to the panel's findings and must not intervene unless the decision is patently unreasonable, i.e. unless the panel's decision was based on an erroneous finding of fact made in a perverse or capricious manner or without regard to the evidence before it.

[9] The second issue involves the panel's interpretation of the Act and the Regulations and is therefore subject to the standard of correctness, enabling the Court to intervene to correct any error by the panel.

ANALYSIS

(1) Did the panel err in assessing the evidence regarding the applicant's credibility?

[10] The panel determined as follows in its decision:

> The tribunal believes that the claimant's story is not only a fabrication but an elaborate attempt to mislead the tribunal. Given the general lack of credibility of the claimant, the tribunal does not believe that the other incidents occurred.

[11] The applicant alleged that the panel erred first in finding that the applicant was not credible based on the confusion regarding the identity of his son who was allegedly kidnapped in India in 2002 and whose whereabouts were now unknown to him and, second, in failing to consider all of the evidence. The applicant explained moreover that the confusion regarding the son in question was simply a matter of clerical error, as the interpreter had confused the names of the applicant's two sons. The applicant finally indicated that Ranjit Singh Randhawa's PIF had been put into the records of the applicant's daughter-in-law and granddaughter and that they had nonetheless been conferred refugee status.

[12] It is important to note *prima facie* that the explanation based on a clerical error was not the explanation that was given to the panel. At the hearing the applicant stated rather that he had received advice from the person he lived with when he arrived in Canada and that this person had encouraged him to make false statements.

[13] Further, the explanation of a clerical error is not consistent with the evidence in the record. Not only does the applicant's PIF mention the kidnapping and presumed disappearance of "Ranjit Singh Randhawa", but these paragraphs also refer to the applicant's [TRANSLATION] "eldest son" which involved more than mere confusion regarding the name. This same [TRANSLATION] "clerical error" is moreover found in the translation of a letter addressed to the "Police-Commissioner" of Mumbai. According to this letter, the applicant's son arrested by Bombay police in December 1990 (i.e. Ranjit) was the same son who was kidnapped by Shiv Sena in 2002. The applicant's explanation for this inconsistency – to the effect that he had shown the interpreter articles referring to Ranjit, leading the interpreter to think that it was the same son who had been kidnapped – is not particularly convincing.

[14] With regard to Ranjit Singh Randhawa's PIF being filed in the record of the applicant's daughter-in-law and granddaughter, this evidence is not at all relevant to this matter. Ranjit's PIF was filed into the applicant's record to establish that he could not logically have been kidnapped in 2002 and have disappeared in 2003, as alleged in the applicant's PIF, since he has been in Canada since 1998. The panel did not make any judgment regarding the content of Ranjit's PIF, but rather

regarding the applicant's PIF, which has nothing to do with the records of his daughter-in-law and his granddaughter.

[15] Considering the implausibilities of the applicant's explanations, the panel's finding regarding the applicant's lack of credibility is not unreasonable.

[16] The final factor raised by the applicant is the panel's failure to consider all of the evidence, in particular the failure to consider the records of his daughter-in-law and his granddaughter, who were given refugee status.

[17] A careful reading of the hearing transcript establishes that the applicant's representative attempted to introduce an amendment to the applicant's PIF referring to his daughter-in-law and the death of his grandson in 2004. Although the information regarding this death should have been filed much earlier, the applicant's representative stated that he had only been informed of it the day before, and the panel therefore accepted the filing. However, the panel noted and the respondent's representative acknowledged that the decision in the file of the applicant's daughter-in-law would not have any impact in this matter. In fact, a panel is not bound by another panel's decision in another matter, as each decision is different and each decision-maker is independent (*Bromberg v. Canada (MCI)*, 2002 FCT 939, [2002] F.C.J. No. 1217 (QL)).

[18] The applicant finally stated that certain evidence had not been considered by the panel because it had not been filed in the 20 days preceding the hearing. However, the applicant did not present any argument to persuade the Court that the panel, by acting in this way, made any

error. Further, the only reference to the evidence that the panel refused to admit is found on page 2 of the transcript where the panel gives the following reasons for its decision:

> I'm not prepared to accept the other documents as submitted. I can't definitely confirm the sources, we don't have the originals.

[19] Indeed, as the respondent submitted, when the panel has reasonable grounds to doubt a fact central to the claim, it can on this basis alone dismiss all of the claimant's testimony. As the Federal Court of Appeal stated in *Sheikh v. Canada (MEI)*, [1990] 3 F.C. 238, [1990] F.C.J. No. 604 (QL), at paragraphs 7 and 8:

> The concept of "credible evidence" is not, of course, the same as that of the credibility of the applicant, but it is obvious that where the only evidence before a tribunal linking the applicant to his claim is that of the applicant himself (in addition, perhaps, to "country reports" from which nothing about the applicant's claim can be directly deduced), a tribunal's perception that he is not a credible witness effectively amounts to a finding that there is no credible evidence on which the second-level tribunal could allow his claim.
>
> . . . In other words, a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant evidence emanating from his testimony.

[20] In *Yang v. Canada (MEI)*, [1995] F.C.J. No. 121 (QL), the Federal Court of Appeal noted moreover:

> The appellant has not succeeded in persuading us that the Board acted unreasonably in finding that the claimant's account of the central incident alleged in support of his claim was implausible. If that central incident is disbelieved, as clearly it was, the other alleged errors of the Board are of no consequence.

[21] In this case, it is clear that the panel determined that the applicant was not credible based on the false statements regarding the kidnapping and subsequent disappearance of his son and that it therefore dismissed all of the applicant's testimony to find that the refugee claim was unfounded.

[22] For the reasons stated above, I consider that the panel's decision regarding the applicant's credibility was well founded and that the intervention of this Court is not justified.

(2) Did the panel err in its interpretation of the Act and the Regulations?

[23] The applicant also raised three of the panel's "errors" in regard to its interpretation of the Act or the Regulations, namely:

(a) the absence of automatic joinder;

(b) the failure to obtain Ranjit Singh Randhawa's consent before filing his PIF in the applicant's record; and

(c) the intervention of the Minister of Public Safety and Emergency Preparedness.

Absence of automatic joinder

[24] Section 49 of the *Immigration and Refugee Protection Regulations*, SOR/2002-228 (the Regulations), provides the following:

49. (1) The Division must join the claim of a claimant to a claim made by the claimant's spouse or common-law partner, child, parent, brother, sister, grandchild or grandparent.	**49.** (1) La Section joint la demande d'asile du demandeur d'asile à celle de son époux ou conjoint de fait, son enfant, son père, sa mère, son frère, sa soeur, son petit-fils, sa petite-fille, son grand-père et sa grand-mère.

[25] The applicant argued that his refugee protection claim should have been joined to the claims of his daughter-in-law and his granddaughter, and that this error justified the intervention of the Court.

[26] On the other hand, the respondent contended that pursuant to section 49, the joinder applied only to the applicant's granddaughter and not to his daughter-in-law. With regard to the

granddaughter, for the application to be joined to her grandfather's, the panel also had to be aware of the relationship uniting them. In section 5 of the PIF, where the claimant must write the name of every family member who has filed a refugee claim, the applicant wrote "N/A" (not applicable). The applicant never sought to amend his PIF afterward and did not file any evidence to the effect that his granddaughter had referred to the family relationship in her own PIF. In fact, the applicant's PIF does not contain any reference to a granddaughter.

[27] The rule of automatic joinder implies that the authorities are aware of the family relationship. If neither the applicant nor his daughter-in-law mentioned the relationship uniting them, and they arrived in Canada separately and filed their claims at least one year apart, how could the authorities proceed to join the proceedings?

[28] Indeed, the applicant could have taken the initiative following his granddaughter's arrival in Canada, and requested their claims be joined, which he did not do. In fact, in the absence of automatic joinder, rule 50 provides the following:

50. (1) A party may make an application to the Division to join claims, Applications to Vacate Refugee Protection or Applications to Cease Refugee Protection.	**50.** (1) Toute partie peut demander à la Section de joindre plusieurs demandes d'asile, d'annulation ou de constat de perte d'asile.

[29] As the family relationship was mentioned for the first time at the applicant's hearing before the panel, namely after his daughter-in-law and granddaughter's hearing, it was too late to join the claims.

The filing of the PIF of the applicant's son

[30] The applicant then submitted that the panel did not observe section 17 of the Regulations, by filing Ranjit Singh Randhawa's PIF in the applicant's record. Section 17 reads as follows:

17. (1) Subject to subsection (4), the Division may disclose to a claimant personal and other information that it wants to use from any other claim if the claims involve similar questions of fact or if the information is otherwise relevant to the determination of the claimant's claim.	**17.** (1) Sous réserve du paragraphe (4), la Section peut communiquer au demandeur d'asile des renseignements -- personnels ou autres -- qu'elle veut utiliser et qui proviennent de toute autre demande d'asile si la demande d'asile soulève des questions de fait semblables à celles de l'autre demande ou si ces renseignements sont par ailleurs utiles à la solution de la demande.
(2) If the personal or other information of another claimant has not been made public, the Division must make reasonable efforts to notify this person in writing that (*a*) it intends to disclose the information to a claimant; and (*b*) the person may object to this disclosure.	(2) Dans le cas où des renseignements -- personnels ou autres -- concernant un intéressé n'ont pas déjà été rendus publics, la Section fait des efforts raisonnables pour aviser par écrit celui-ci des faits suivants: *a*) elle a l'intention de les communiquer à un autre applicant d'asile; *b*) l'intéressé peut s'opposer à la communication.
(3) In order to decide whether to object to the disclosure, the person notified may make a written request to the Division for personal and other information relating to the claimant. Subject to subsection (4), the Division may disclose only information that is necessary to permit the person to make an informed decision.	(3) Pour décider s'il s'opposera à la communication, l'intéressé peut demander à la Section, par écrit, qu'elle lui communique des renseignements -- personnels ou autres -- sur le demandeur d'asile. Sous réserve du paragraphe (4), la Section ne communique à l'intéressé que les renseignements nécessaires pour qu'il puisse prendre sa décision en connaissance de cause.
(4) The Division must not disclose personal or other information if there is a serious possibility that it will endanger the life, liberty or security of any person or is likely to cause an injustice.	(4) La Section ne peut communiquer de renseignements -- personnels ou autres -- si cela entraînerait des risques sérieux pour la vie, la liberté ou la sécurité d'une personne ou causerait vraisemblablement une injustice.

[31] As argued by the respondent, the Regulations do not require that the person concerned give his or her consent to have the information disclosed. Rather, there must be “reasonable efforts” made to notify the person, and if the person objects, his or her objections will be taken into consideration by the RPD and the information will not be disclosed “if there is a serious possibility that it will endanger the life, liberty or security of any person or is likely to cause an injustice”.

[32] On February 23, 2006, a letter was sent to Ranjit Singh Randhawa, notifying him of the RPD’s intention to file his record as evidence in another refugee claim hearing, and indicating that he had to disclose any objection before March 10, 2006, failing which his consent would be presumed. The letter had been returned to the sender as Ranjit Singh Randhawa no longer resided at that address. On April 7, 2006, a letter was sent to the panel by the applicant’s representative, stating that the applicant’s son had informed him that he objected to the disclosure of his record. However, the panel did not receive any document signed by Ranjit Singh Randhawa indicating his refusal.

[33] The applicant insisted on the fact that the panel should have sought the consent of Ranjit Singh Randhawa at the beginning of the hearing, since he was there. The applicant stated moreover that the person concerned must be informed and have the opportunity to make submissions.

[34] Since Ranjit Singh Randhawa was in the waiting room during the hearing for his father, who had amended his own PIF to indicate that Ranjit had been in Canada since 1998, I have difficulty believing that Ranjit was not aware of the situation and had not already been in a position to object in writing to the panel through his father’s representative.

[35] Indeed, it is clear on reading the transcript that the panel, after learning that the applicant's son was present, sought to obtain his consent, and that the applicant's representative stated that this was not necessary, since he did not object to the disclosure of his record, other than the absence of an official notice, a notice which he would have received if his change of address had been disclosed. I refer to a passage from page 12 of the transcript in support of this:

> Q. But since he is here, perhaps we could save ourselves some steps and hear it from him, that he does not want his file disclosed.
>
> A. No. Actually, I discussed with him just now.
>
> Q. Yes?
>
> A. Do you have any objection (inaudible) using your file, his objection was only that nobody asked him before disclosing. So, now I understand that you sent a letter.

[36] In the absence of an objection by the individual concerned, and given that he was present in the waiting room, the panel determined that filing this individual's record would not bring about any of the risks provided under subsection 17(4) of the Regulations.

[37] In my opinion, section 17 was respected and there is nothing to justify the intervention of this Court.

Intervention of the Minister of Public Safety and Emergency Preparedness

[38] Finally, the applicant argued that the representative of the Minister of Public Safety and Emergency Preparedness, who disclosed the existence of the record of the applicant's son, was not authorized to review the applicant's PIF or his son's PIF, as this right was reserved to the Minister of Citizenship and Immigration.

[39] It is clear, as the respondent argued, that the applicant's objection to the presence and to the action of the Minister of Public Safety and Emergency Preparedness has no legal basis in his case. In fact, section 4 of the Act provides that the Minister, within the meaning of section 2 of the *Canada Border Services Agency Act*, S.C. 2005, c. 38, i.e. the Minister of Public Safety and Emergency Preparedness, may be responsible for the administration of the Act in certain circumstances. Section 4 of the Act reads as follows:

4. (1) Subject to subsection (2), the Minister of Citizenship and Immigration is responsible for the administration of this Act.	**4.** (1) Sous réserve du paragraphe (2), le ministre de la Citoyenneté et de l'Immigration est chargé de l'application de la présente loi.
(2) The Minister as defined in section 2 of the *Canada Border Services Agency Act* is responsible for the administration of this Act as it relates to (*a*) examinations at ports of entry; (*b*) the enforcement of this Act, including arrest, detention and removal; (*c*) the establishment of policies respecting the enforcement of this Act and inadmissibility on grounds of security, organized criminality or violating human or international rights; or (*d*) determinations under any of subsections 34(2), 35(2) and 37(2).	(2) Le ministre, au sens de l'article 2 de la *Loi sur l'Agence des services frontaliers du Canada*, est chargé de l'application de la présente loi relativement: *a*) au contrôle des personnes aux points d'entrée; *b*) aux mesures d'exécution de la présente loi, notamment en matière d'arrestation, de détention et de renvoi; *c*) à l'établissement des orientations en matière d'exécution de la présente loi et d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou pour activités de criminalité organisée; *d*) à la prise des décisions au titre

des paragraphes 34(2), 35(2) ou 37(2).

(3) Subject to subsections (1) and (2), the Governor in Council may specify

(*a*) which Minister referred to in subsections (1) and (2) shall be the Minister for the purposes of any provision of this Act; and

(*b*) that both Ministers may be the Minister for the purposes of any provision of this Act and the circumstances under which each Minister shall be the Minister.

(3) Sous réserve des paragraphes (1) et (2), le gouverneur en conseil peut préciser:

a) lequel des ministres visés à ces paragraphes est chargé de l'application de telle des dispositions de la présente loi;

b) que les deux ministres sont chargés de l'application de telle de ces dispositions, chacun dans les circonstances qu'il prévoit.

(4) Any order made under subsection (3) must be published in Part II of the *Canada Gazette*.

(4) Tout décret pris pour l'application du paragraphe (3) est publié dans la partie II de la *Gazette du Canada*.

[40] Pursuant to the "Order Setting Out the Respective Responsibilities of the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness Under the Act", S.I. 2005-2042, November 21, 2005, the Minister of Public Safety and Emergency Preparedness is a Minister authorized to be present at the hearing pursuant to paragraph 173(*b*) of the Act and is responsible for the application of paragraphs 170 (*c*) to 170(*f*) of the Act which read as follows:

170. The Refugee Protection Division, in any proceeding before it,

…

(*c*) must notify the person who is the subject of the proceeding and the Minister of the hearing;

(*d*) must provide the Minister, on request, with the documents and information referred to in subsection 100(4);

(*e*) must give the person and the Minister a reasonable opportunity to present evidence, question witnesses and make

170. Dans toute affaire dont elle est saisie, la Section de la protection des réfugiés:

[…]

c) convoque la personne en cause et le ministre;

d) transmet au ministre, sur demande, les renseignements et documents fournis au titre du paragraphe 100(4);

e) donne à la personne en cause et au ministre la possibilité de produire des éléments de preuve, d'interroger des témoins et de

representations;	présenter des observations;
(*f*) may, despite paragraph (*b*), allow a claim for refugee protection without a hearing, if the Minister has not notified the Division, within the period set out in the rules of the Board, of the Minister's intention to intervene;	*f*) peut accueillir la demande d'asile sans qu'une audience soit tenue si le ministre ne lui a pas, dans le délai prévu par les règles, donné avis de son intention d'intervenir;

[41] Paragraph 170 (*d*) refers to documents provided pursuant to subsection 100(4) of the Act which states:

(4) The burden of proving that a claim is eligible to be referred to the Refugee Protection Division rests on the claimant, who must answer truthfully all questions put to them. If the claim is referred, the claimant must produce all documents and information as required by the rules of the Board.	(4) La preuve de la recevabilité incombe au demandeur, qui doit répondre véridiquement aux questions qui lui sont posées et fournir à la section, si le cas lui est déféré, les renseignements et documents prévus par les règles de la Commission.

[42] As the respondent submitted, the "documents . . . required by the rules of the Board" include an applicant's PIF as well as any other document provided by him. The Minister of Public Safety and Emergency Preparedness was therefore authorized by law to review the files of the applicant and his son.

[43] For all of these reasons, the application for judicial review is dismissed.

[44] The parties did not submit any question for certification.

JUDGMENT

1. The application for judicial review is dismissed.

2. No question for certification.

"Pierre Blais"

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5561-06
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