Date: 20070605

Docket: IMM-6201-06

Citation: 2007 FC 569

Ottawa, Ontario, June 5, 2007

Present: The Honourable Mr. Justice Beaudry

BETWEEN:

MANJIT SINGH
RAVINDER KAUR
MUSKAN KAUR

Applicants

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) against the decision dated October 24, 2006, by Michel Jobin of the Refugee Protection Division (the panel). The panel concluded that the applicants were not "Convention refugees" or "persons in need of protection" by reason of their imputed political opinions.

ISSUE

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

[3] For the following reasons, the answer to this question is in the negative. Accordingly, this application for judicial review will be dismissed.

FACTUAL BACKGROUND

[4] The principal applicant is a citizen of India and is of the Sikh religion. He filed a refugee claim for himself, his wife and their minor daughter in Montréal on May 20, 2004, although they had entered Canada with their visas via Vancouver on November 18, 2003.

[5] The principal applicant and his family left New Delhi on October 8, 2003. Before arriving in Canada, they first transited in Germany from October 8 to 20, 2003, then in the United Kingdom from October 20 to November 3, 2003, and returned to Germany from November 3 to 18, 2003.

[6] They did not claim refugee status in Germany or in England, although both countries are signatories to the Convention. Nor did the applicants claim refugee status in Canada until their Canadian visas expired, six months after they arrived here.

LEGAL HISTORY IN CANADA

[7] The applicants' claim was dismissed on April 20, 2005. However, on November 23, 2005, Mr. Justice Frederick Gibson allowed the application for judicial review on consent of the parties and remitted the matter to another decision maker.

[8] It is the second negative decision dated October 24, 2006, that is the subject of this application for judicial review.

DISPUTED DECISION

[9] After assessing and analysing the evidence, the panel found that the applicants were not credible. In addition, they had not claimed protection from India.

[10] Although they may fear the police and were tortured on two occasions, the applicants hardly behaved like reasonable people fearing for their lives. In fact, the panel was not satisfied with the principal applicant's explanations regarding his decision to not claim refugee status in Germany or England. If the applicant genuinely feared for his life and that of his family in India, he should have filed a refugee claim in one of the countries that are signatories to the Convention. Moreover, a reasonable person in similar circumstances would certainly not have waited six months after arriving in Canada to assert his fear of persecution.

ANALYSIS

Is the panel's decision patently unreasonable?

Standard of review

[11] I must determine the appropriate standard of review in this case. Where credibility is in issue, the Supreme Court of Canada has already stated the following in *Dr Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, at paragraph 38**:**

> ¶ 38 Finally, however, the need for deference is greatly heightened by the nature of the problem — a finding of credibility. Assessments of credibility are quintessentially questions of fact. The relative advantage enjoyed by the Committee, who heard the *viva voce* evidence, must be respected.

[12] The Federal Court of Appeal considers that the tribunal in question is in a better position to assess the credibility of a witness and to draw the necessary inferences: *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) (QL) at paragraph 4:

> There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. In *Giron*, the Court merely observed that in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record. In our opinion, *Giron* in no way reduces the burden that rests on an appellant, of showing that the inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden.

[13] The Court adopts the patently unreasonable standard since the panel essentially had to assess the applicants' credibility.

[14] In this case, I note that the decision contains factual errors mainly with respect to dates, and I will comment on two of them. First, on the first page, the panel wrote the following:

> [TRANSLATION]
>
> . . . As noted above, the claimant lived for some time in the United States and in Germany, and even spent several weeks in the United Kingdom before returning to Germany and finally <u>arriving in British Columbia in March 2003</u>.
>
> [Emphasis added.]

[15] The panel clearly made an error in this excerpt because the applicants arrived in Vancouver in November 2003. This error is not significant since the panel used the correct date twice later in its decision on pages two and four, respectively:

> [TRANSLATION]
>
> Finally, carrying a passport issued April 10, 1996, and valid for 10 years, visas for the United Kingdom and for Schengen, and a Canadian visa issued July 2, 2003, and valid until December 29, 2003, and an American visa issued in 1998 and valid until February 1999, the claimants left New Delhi on October 8, 2003. They transited through Germany from October 8 to October 20, 2003 and the United Kingdom from October 20 to November 3, 2003; they returned to Germany from November 3 to November 18, 2003, and finally arrived in Vancouver on November 18, 2003, after which they came to Montreal and made a claim for protection with the Canadian authorities on May 20, 2004. . . .
>
> When the panel asked why the claimants did not seek the protection of Canadian authorities upon their arrival in Vancouver, the claimant indicated that he had been invited to visit friends of his father. They advised him to go to Montreal to make a claim for refugee protection. The claimants arrived in Vancouver on November 18, 2003, and arrived in Montreal on November 23, 2003. . . .
>
> [Emphasis added]

[16] The second error concerns the expiration date of the applicants' visas. According to the panel, they expired on December 29, 2003, whereas they were actually valid until May 17, 2004. However, I do not consider this error to be determinative since the decision was not based on this factor.

[17] The third error occurred when the panel mentioned that the applicant returned to his country, whereas he returned to his region after staying in New Delhi to obtain visas.

[18] The decision-maker's main grounds for refusing asylum are: (1) the applicants' behaviour regarding their various trips to Europe without requesting protection; (2) the credibility; (3) the fact that they did not seek protection from India; and (4) the possibility of an internal flight alternative.

[19] As the respondent admits, it is clear that the decision could have been structured much better but despite the errors noted, I find nothing in the decision that could characterize it as patently unreasonable.

[20] As in *Mohamed et al v. Canada (The Minister of Citizenship and Immigration),* (April 7, 1997) IMM-2248-96 (F.C.T.D.), the applicants have not established a reasonable fear of persecution. It is appropriate here to quote Mr. Justice Marshall Rothstein:

> This case raises the disturbing question of asylum shopping. If applicants' counsel were correct in his domicile argument, applicants could, at their own will, reject the protection of one country by unilaterally abandoning that country for another. Indeed, that is what has occurred here. The Geneva Convention exists for persons who require protection and not to assist persons who simply prefer asylum in one country over another. The Convention and the *Immigration Act* should be interpreted with the correct purpose in mind.

[21] It is not necessary for the Court to intervene in this case.

[22] No question to be certified was proposed.

JUDGMENT

THE COURT ORDERS that

1. The application for judicial review be dismissed.

2. No question is certified.

"Michel Beaudry"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-6201-06**
STYLE OF CAUSE:	**MANJIT SINGH, RAVINDER KAUR MUSKAN KAUR ET MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	May 15, 2007
REASONS FOR JUDGMENT AND JUDGMENT BY:	The Honourable Mr. Justice Beaudry
DATED:	June 5, 2007

APPEARANCES:

Michel Le Brun	FOR THE APPLICANTS
Evan Liosis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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