

Date: 20080114

Docket: IMM-2008-07

Citation: 2008 FC 22

Ottawa, Ontario, January 14, 2008

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

HARJINDER SINGH

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (hereinafter the RPD), finding that applicant is not a “Convention Refugee” or a “person in need of protection” as defined by sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The applicant is a citizen of India who came to Canada on August 15, 2003, with a visa, hoping that the Canadian Sikh community would sponsor him. He filed his refugee claim on June 30, 2005. Accused of having ties with terrorists, he alleges that he was arrested and tortured by the police in Delhi several times between August 2001 and December 2002.

[3] The RPD condemned the applicant *inter alia* for having failed to file any document directly corroborating his story. According to the RPD,

. . . To corroborate his story, he filed exhibits P-7 to P-9, letters from people he does not know. However, he could have filed affidavits or letters from his wife, his mother or his father . . .

The panel would like to believe that hearsay is admissible, but it is admissible only when there is no other alternative. . . .

One thing is certain: exhibits P-7 to P-9 are hearsay in the truest sense of the term. In addition, the claimant was unable to provide reasons why he filed these exhibits, while he could have filed evidence that was more credible.

. . .

In light of the preceding, the panel determines that the claimant did not provide clear and convincing evidence of the facts in his story. His evidence is not complete, although it could have been.

[Emphasis added.]

[4] The applicant submits that the RPD erred in law by applying the “clear and convincing” standard of proof. He also argues that this panel erred in fact in its analysis of the evidence.

[5] Even though we afford the RPD considerable deference regarding its findings of fact, on questions of law the applicable standard of review is that of correctness (*Pissareva v. Canada*

(*Minister of Citizenship and Immigration*) (2000), 11 Imm. L.R. (3d) 233, [2000] F.C.J. No. 2001 (F.C.T.D.) (QL)).

[6] In my opinion, the RPD, in this case, erred in law when it applied the “clear and convincing” standard of proof to the applicant’s claim. In order to claim refugee status, a claimant has the burden of establishing on a balance of probabilities that he has a well-founded fear of persecution. It is only on the issue of State protection that the burden requires clear and convincing evidence (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689).

[7] In my opinion, this error in law is sufficient to justify the intervention of the Court.

[8] The application for judicial review is therefore allowed, the RPD’s decision is set aside and the matter referred back to a differently constituted panel of the Refugee Protection Division for redetermination.

“Yvon Pinard”

Judge

Ottawa, Ontario
January 14, 2008

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2008-07

STYLE OF CAUSE: HARJINDER SINGH v. MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 4, 2007

REASONS FOR JUDGMENT: Pinard J.

DATE OF REASONS: January 14, 2008

APPEARANCES:

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