

Date: 20080401

Docket: IMM-3690-07

Citation: 2008 FC 408

Montréal, Quebec, the 1st day of April 2008

Present: the Honourable Mr. Justice Maurice E. Lagacé

BETWEEN:

JASWANT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Jaswant Singh (the applicant) filed an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) which concluded that the applicant was neither a “Convention refugee” nor a “person in need of protection” within the meaning of sections 96 and 97 of the *Immigration and Refugee and Protection Act* (the Act).

[2] The Minister of Citizenship and Immigration (the Minister) opposed the application.

Issue

[3] Did the panel make an unreasonable error in its negative assessment of the applicant's credibility?

Facts

[4] The applicant is 49 years old and a citizen of India, and he cited problems which occurred in his country of origin between November 1986 and July 1997 and allegedly resulted from the fact that he is a baptized Sikh. He said he was arrested several times and tortured by the police because he was suspected of maintaining links with and assisting the cause of militant Sikhs and promoting the independence of the Punjab.

[5] The applicant left India in July 1997 for the U.S., where he filed a refugee status application that was denied. When the U.S. authorities threatened to send him back to his country of origin, he finally arrived in Canada in August 2005 and made a protection application.

[6] Despite the time which has elapsed since his flight from India, the applicant still maintains that the police there have not forgotten him and continue to harass his family, so much so that his life would still be in danger if he were to return to the country of origin.

Panel's decision

[7] After considering and commenting on the main points in the evidence and noting the applicant's contradictions between his statements in the Personal Information Form (PIF), his testimony to the immigration officer, his testimony at the hearing and the documentary evidence, the panel found his account to be neither credible nor consistent with the documentary evidence. Consequently, it did not accept the applicant's allegations that sending him back to the country of origin would subject him to substantial present and personal risk of torture or a threat to his life and so dismissed his application.

Parties' allegations

[8] The applicant alleged that the panel made an incomplete analysis of the evidence and drew conclusions contrary to the evidence. In particular, he contended that the conclusion on his credibility resulted from errors in the assessment of the evidence that were significant enough to warrant this Court's intervention.

[9] For his part, the Minister maintained that the conclusions drawn by the panel from the evidence were reasonable and were within its jurisdiction and its expertise to analyse and assess, and consequently the Minister saw no valid ground justifying this Court's intervention to overturn the panel's decision.

Standard of review

[10] The Supreme Court's recent decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*), has meant that judicial review of the decisions of administrative tribunals is now subject only to two standards: that of "correctness" and that of "reasonableness". That case also urged courts once again to treat the decisions of specialized administrative tribunals such as the panel with deference, as they have a certain expertise in cases within their jurisdiction.

[11] The standard of "reasonableness" applies to the case at bar and does not open the door to greater intervention, despite the applicant's wishes. As this Court noted in *Navarro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358, [TRANSLATION] "this is not the meaning and scope that should be given to *Dunsmuir*: quite the contrary".

[12] The Court must always consider whether the impugned decision is reasonable in view of the "justification for the decision" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir, supra*, para. 47; *Navarro, supra*, para. 13).

[13] Within this standard of review, can the Court conclude that the panel erred when it decided that the applicant was neither a "Convention refugee" nor a "person in need of protection" within the meaning of the Act?

Analysis

[14] Based on the fact that the panel did not comment in its decision on certain parts of the evidence which the applicant considered more important than those used, he maintained that the panel had not considered all the evidence it should consider and that its decision was not reasonable.

[15] This argument by the applicant disregards the presumption that the panel has considered all the evidence before it (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (C.A.) (QL)). It also overlooks the fact that when the panel concludes that a refugee status claimant is not credible it does not have a duty to explain the reasons why it attaches no evidentiary value to the documents supporting the allegations which it has found to be not credible (*Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 471, *per* Rouleau J., at para. 26).

[16] In trying to persuade the Court that the panel erred in the negative inferences which it drew from the evidence as to his credibility, the applicant in fact sought to justify parts of the testimony which the panel rejected because it found them unreliable or unsatisfactory. It should be borne in mind that the applicant had an opportunity to present his explanations to the panel in full; but unfortunately for him, the panel did not find them to be credible. It is not this Court's function to repeat that exercise. The panel has the benefit of relying on its expertise, and especially of hearing the applicant and his explanations, which certainly puts it in a better position than this Court to determine his credibility. It is not this Court's function to do the panel's work, but simply to determine whether its decision was unreasonable in the sense indicated by *Dunsmuir, supra*.

[17] When the applicant argues that the panel's decision passed over evidence which he considered important or that the decision looked only at part of the evidence rather than some other part which he considered more important, he is quite simply asking this Court to reassess the evidence submitted in support of the refugee status claim and substitute its opinion for that of the panel. Such an approach is prohibited in a judicial review proceeding (*Chen v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 551 (C.A.) (QL), at para. 5, applying *Canadian Union of Public Employees, Local 301 v. City of Montréal*, [1997] 1 S.C.R. 793).

[18] The applicant certainly would have preferred the panel to give greater emphasis to a different passage from a particular document (section 8.4.2, instead of 8.6, of the "Report on Fact-Finding Mission to Punjab"). However, such an argument is not a valid ground for judicial review since it is well settled that the panel does not in principle have any duty to mention all the evidence submitted by the parties (*Florea, supra*). This principle is all the more applicable when the panel decides, as it did here, that the applicant's account lacks credibility (*Ahmad, supra; Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (C.A.)).

[19] When an applicant submits documentary evidence to the decision-maker, he or she may expect that the latter will accept it in its entirety or only in part, or reject it outright. As the decision-maker, it is the panel's function here to select and use the parts of the evidence which it considers most persuasive as a basis for its conclusions. If subsequently, as in the case at bar, this choice does

not suit the applicant because it is harmful to his case, that is not a valid ground for reviewing the decision.

[20] Finally, contrary to what was alleged by the applicant, the contradictions noted by the panel do not in any way appear to be based on errors. On the contrary, they clearly result from the grey areas and variations between the applicant's statements in his PIF, the statements made to the immigration officer and his testimony at the hearing. In the Court's view, the evidence justified the panel concluding that the applicant lacked credibility and finding that he was neither a "Convention refugee" nor a "person in need of protection" within the meaning of the Act.

[21] For these reasons, the applicant's application must be dismissed. No question was submitted for certification and the Court agrees that this case raises no question of general importance.

JUDGMENT

FOR THESE REASONS, THE COURT:

DISMISSES the application for judicial review.

“Maurice E. Lagacé”

Deputy Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3690-07

STYLE OF CAUSE: JASWANT SINGH v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 20, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** THE HONOURABLE MR. JUSTICE LAGACÉ

DATED: April 1, 2008

APPEARANCES:

Michel Le Brun FOR THE APPLICANT

Alexandre Tavadian FOR THE RESPONDENT
Bassam Khouri

SOLICITORS OF RECORD:

Michel Le Brun FOR THE APPLICANT
LaSalle, Quebec

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