

Date: 20080516

Docket: IMM-3866-07

Citation: 2008 FC 601

BETWEEN:

AJIT PAL SINGH RANDHAWA

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of the decision by the Refugee Protection Division (hereinafter “RPD”) of the Immigration and Refugee Board that the applicant, a citizen of India, is neither a Convention “refugee” nor a “person in need of protection” according to the definitions in sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27.

[2] The RPD considered the applicant's lack of credibility, the existence of an internal flight alternative (hereinafter "IFA") and the existence of state protection in rejecting the applicant's claim.

[3] With respect to the existence of an IFA, an asylum seeker must demonstrate that there is a serious risk of persecution throughout his country. If the RPD raises the possibility of an IFA, the onus is on the claimant to show that none exists (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (C.A.), *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (C.A.), *Sarker v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 353, [2005] F.C.J. No. 435 (F.C.T.D.) (QL)).

[4] In this case, the applicant submits that the RPD's finding regarding the existence of an IFA was based on a negative finding regarding his credibility. However, here is what the RPD wrote:

The panel finds that the claimant has not established that the family had a dealership and rented rooms to the alleged militants and does not find his testimony credible. Alternatively, the panel finds that the claimant has a viable [internal flight alternative].

[5] It is clear that the RPD's finding regarding the existence of an IFA is an alternative to its finding regarding the applicant's credibility. The RPD found that the applicant could live in another town in India without fear that the police would come after him. The applicant submitted no argument beyond his claim that one of the findings was based on the conclusion that he lacked credibility. Therefore, he has failed to demonstrate that the finding of the existence of an IFA was unreasonable.

[6] As for the finding of the existence of state protection, it is hard to tell from reading the RPD's decision whether its finding that state protection was available in India was based on its conclusion that the applicant lacked credibility. Judging from the following excerpt, the RPD seems to have believed that the applicant had recourses available to him despite having been tortured by the police:

The documentary evidence indicates that some police officers were dealt with and some were not. There were guidelines implemented to be followed. Police disciplinary action is conducted internally and sometimes courts are not aware of this. However, these methods are in place.

[7] However, in the following paragraphs, the RPD makes comments that seem to indicate that its finding regarding state protection was linked to its conclusion regarding credibility:

The claimant testified of two incidents when he was arrested and both times he was released. The claimant despite his problems with the police was able to obtain a passport and a visa to travel to Canada and had no problems leaving India.

The panel finds that implausible if he was being sought by the police. The panel does not find his story credible. The panel does not give any weight to his medical letter because the civil and political system is so corrupt (Information Request: Number: IND1007769) that such documents from a local politician can be obtained with the payment of a bribe.

[8] In any event, I am of the opinion that the Court's intervention on the issue of the existence of state protection is unwarranted in this case. According to the Supreme Court of Canada, except in situations of complete breakdown of the state apparatus, the asylum seeker has the burden of proving clearly and convincingly that he cannot seek the protection of his state (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689). In *The Minister of Citizenship and Immigration and Maria Del Rosario Flores Carrillo*, 2008 FCA 94, the Federal Court of Appeal also wrote the following:

A refugee who claims that the state protection is inadequate or non-existent bears the evidentiary burden of adducing evidence to that effect and the legal burden of persuading the trier of fact that his or her claim in this respect is founded. The standard of proof applicable is the balance of probabilities and there is no requirement of a higher degree of probability than what that standard usually requires. As for the quality of the evidence required to rebut the presumption of state protection, the presumption is rebutted by clear and convincing evidence that the state protection is inadequate or non-existent.

[9] In this case, despite the applicant's difficulties with the police, the RPD's finding that he had useful recourses available to him was reasonable. In my opinion, the applicant failed to provide the evidence necessary to rebut the presumption of the existence of state protection.

[10] In the circumstances, each of the RPD's findings, regarding the existence of an IFA and regarding the existence of state protection, is sufficient to support the ultimate determination that the applicant is neither a refugee nor a person in need of protection, and therefore to dismiss this application for judicial review (see *Jasvir Singh v. Minister of Citizenship and Immigration*, 2003 FCT 185, [2003] F.C.J. No. 291 (F.C.T.D.) (QL)).

[11] Accordingly, the application for judicial review is dismissed.

“Yvon Pinard”

Judge

Ottawa, Ontario
May 16, 2008

Certified true translation

Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3866-07

STYLE OF CAUSE: AJIT PAL SINGH RANDHAWA v. MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 8, 2008

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Pinard

DATED: May 16, 2008

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Date: 20080516

Docket: IMM-3866-07

Ottawa, Ontario, the 16th day of May 2008

Present: The Honourable Mr. Justice Pinard

BETWEEN:

AJIT PAL SINGH RANDHAWA

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT

The application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board that the applicant is neither a Convention “refugee” nor a “person in need of protection” according to the definitions in sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27, is dismissed.

“Yvon Pinard”

Judge

Certified true translation

Francie Gow, BCL, LLB