

Date: 20080909

Docket: IMM-718-08

Citation: 2008 FC 1002

Ottawa, Ontario, September 9, 2008

PRESENT: THE HONOURABLE MR. JUSTICE SHORE

Between:

HARPREET SINGH CHEEMA

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Where the very core or crux of the applicant's story has no credible basis and nothing is tenable in terms of credibility because of inherent inconsistencies and certain discrepancies in the applicant's story, an application for judicial review is clearly dismissed.

II. Judicial proceeding

[2] This is an application for leave and for judicial review to file an application for judicial review against a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated January 17, 2008, where the Board determined that the applicant was not a “Convention refugee” or a “person in need of protection” within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

III. Facts

[3] The applicant, Harpreet Singh Cheema, born either on August 30, 1980 (declaration at the port of entry) or July 30, 1984 (passport and birth certificate), is allegedly single and a citizen of India. He claims to have 12 years of schooling.

(Applicant’s record (AR), Passport, page 35; Birth certificate, page 40; Personal Information Form (PIF), Q-1(d), 1(g), 3 and 6, pages 22-24.)

[4] Initially, Mr. Cheema based his refugee claim on the fact that he feared the vengeance of the party in power in Punjab, which he refused to join because he was allegedly a member of an opposition party.

(Translation of the Declaration: AR, page 105; PIF, Q-31: AR, pages 30 and 31; Reasons for Decision, pages 3 and 4.)

[5] The facts alleged in support of the refugee claim are set out in the declaration that Mr. Cheema made at the port of entry, in the officer's notes, in the answer that he gave to question 31 of his PIF and in the first two pages of the reasons for the decision.

(Schedule 1: Tribunal Record (TR), pages 88-92; Information: AR, page 94-96; Officer's notes: AR, pages 97-104; Translation of the Declaration: AR, page 105; PIF, Q-31: AR, pages 30-31; Reasons for Decision: AR, pages 8-16.)

[6] According to Mr. Cheema's refugee claim, his name is Harpreet Singh CHEEMA. But in the declaration that he wrote at the port of entry of Punjabi, Mr. Cheema stated that his name was Harpreet SINGH.

(Background Information: TR, page 87; Schedule 1, Q-1: TR, page 88; Information, Q-1: AR, page 94; Officer's notes: AR, page 97; Translation of the Declaration: AR, page 105.)

[7] On his birth certificate, his registration certificate and his passport, Mr. Cheema is described as Gurpreet SINGH. However, in exhibits P-5, P-6, P-7 and P-8, he is described as Gurpreet Singh Cheema, while in his PIF, he declares that his name is Singh CHEEMA.

(Birth certificate: TR, page 40; Passport: TR, page 35; Registration Certificate: TR, page 43; Exhibits P-5 to P-8: AR, pages 46-51; PIF, Q-1(a) and 1(b): AR, page 22; Reasons for Decision, page 1.)

[8] When he arrived in Canada, Mr. Cheema declared that he was born on August 30, 1980, a statement that is inconsistent with later statements and the identification documents that he filed in evidence.

(Schedule 1: TR, page 88; Information, Q-4: AR, page 94; Officer's notes: AR, page 102; Birth certificate: AR, page 40; Passport: TR, page 35; PIF, Q-1(a) and 1(b): AR, page 22).

[9] When he arrived in Canada on February 3, 2008, Mr. Cheema did not have any identification or travel documents, with the exception of a one-way plane ticket from Mumbai, Bombay, to Delhi, for January 22, 2006, and seat receipts for a flight at 10:30 p.m. on January 30, 2006 (Ticket: TR, page 112; Seat receipts: TR, page 114).

[10] Mr. Cheema immediately claimed protection on the grounds that he feared the members of the Congress Party, adding that he had never been arrested, that he was not wanted and that he had never belonged to a political organization. Indeed, he indicated that he had been a member of the Akali Party but that there had never been activity. Mr. Cheema never stated that his father had disappeared (Schedule 1, Q-3D, 4J and 5: TR, pages 90-91; Officer's notes, Q-4 and 7: AR, page 97-98-102-103).

[11] At the port of entry, Mr. Cheema stated that he had left India for Moscow on January 30, 2006, and that he left Moscow on February 3, 2006, for Canada and had travelled with a false passport that he had never examined, while he had a valid one at home in India. The

immigration officer found that Mr. Cheema's statements were evasive and inconsistent (Schedule 1, Q-1C and 2: TR, page 88-89; Officer's notes, Q-9: AR, page 99, 104).

[12] In his PIF, Mr. Cheema stated that he had left his country on February 3 and added the details of his father's problems and disappearance to his story (PIF, Q-12, 23, 31: AR, pages 26-28-30-31).

[13] At the hearing, the Board asked Mr. Cheema several questions in an attempt to determine where he lived, when he left India, with which passport he had travelled, whether he had obtained a visa for Moscow, how much time he had spent in that city, why he had never addressed the issue of his father (Reasons for Decision, pages 1-9).

IV. Impugned decision

[14] The Board determined that Mr. Cheema used several names (Reasons for Decision, pages 1 and 9).

[15] The Board determined that Mr. Cheema was not credible, relying on the following factors:

- (a) When the Board asked Mr. Cheema whether he lived in Mumbai, why he had a one-way ticket from Mumbai to Delhi, and why he had never mentioned the city of Mumbai, Mr. Cheema was unable to give an answer satisfactory to the Board, which found that his response indicated that he was not a credible witness (Reasons for Decision, page 2).

- (b) Since Mr. Cheema had given inconsistent dates regarding the date of his departure from India, the Board asked him whether he had travelled on January 30, 2006, and confronted him with the seat receipts dated January 30, 2006, at 10:30 p.m. The Board did not believe the answers given by Mr. Cheema, who initially testified that he did not know whether he had travelled on January 30, and then confused the dates of his trip and his departure from India (Reasons for Decision, pages 2 and 3).
- (c) Mr. Cheema was unable to explain to the Board why the copy of his own passport with which he travelled from India to Moscow did not include a visa; he was unable to remember on what date he had obtained his visa and what type of visa he had (Reasons for Decision, page 3).
- (d) The fact that Mr. Cheema had not kept the ticket or the boarding pass to establish on what date he had travelled between India and Russia (Reasons for Decision, page 3).
- (e) The fact that his passport did not have a seal from the Moscow airport to establish the date of his arrival (Reasons for Decision, page 3).
- (f) The inconsistencies regarding the length of his stay in Moscow (Reasons for Decision, pages 3 and 9).
- (g) The Board was not satisfied with the reasons that Mr. Cheema provided to explain the inconsistencies between the name and date of birth that he gave at the port of entry (Reasons for Decision, pages 3 and 4).
- (h) The fact that Mr. Cheema did not mention the disappearance of his father at the port of entry, an omission that the Board found unacceptable (Reasons for Decision, pages 3 and 4).

- (i) Mr. Cheema's evasive nature in regard to his efforts or those of his family in trying to find out what happened to his father, whether he had been declared dead, why his father's lands were still in the name of Mr. Cheema's father, why he or his family had not reported it (Reasons for Decision, pages 4-6).
- (j) The fact that Mr. Cheema added at the hearing that he was wanted by his alleged persecutors when according to his initial or amended PIF he had never stated that his persecutors had been looking for him since his departure (Reasons for Decision, page 6).
- (k) The fact that Mr. Cheema had added at the hearing that his father had prior problems (Reasons for Decision, pages 6-7).
- (l) The fact that Mr. Cheema had declared that the birth certificate, dated 2006 and filed in evidence, was the first that he had obtained when he had stated that he had obtained a passport in 2005 using his birth certificate (Reasons for Decision, page 7).
- (m) The fact that the affidavits and letters filed in evidence did not provide any specific details regarding the story of Mr. Cheema and his father (Reasons for Decision, pages 7 and 8).
- (n) The fact that Mr. Cheema's testimony lacked spontaneity (Reasons for Decision, page 8).

[16] The Board raised the issue of why Mr. Cheema alleged that he had travelled with a false passport when there was an authentic one in his name and when he was not wanted by the authorities (Reasons for Decision, pages 2 and 3).

V. Issue

[17] Was the Board's decision reasonable?

VI. Standard of review

[18] In light of the recent decision by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the issue which must now be decided by this Court is whether or not the decision is reasonable. In the affirmative, this Court must refuse to intervene and dismiss the application.

VII. Analysis

[19] Mr. Cheema disputes the merits of some of the Board's findings (Applicant's memorandum, paragraphs 1-48; AR, pages 122-129).

[20] However, Mr. Cheema is not challenging the merits of the other more significant findings, like those involving Mr. Cheema's failure to declare at the port of entry his father's problems, in particular his disappearance (Applicant's memorandum, paragraphs 10-17; AR, pages 146 and 147).

[21] The respondent argues that determinative in this case is the fact that Mr. Cheema did not challenge the most significant credibility findings of the Board's decision, findings based on the failure to declare at the port of entry his father's problems and disappearance, the inconsistencies in regard to his identify, his date of birth, the date of his departure, the date of his trip, obtaining his visa.

[22] There is nothing in the decision that would suggest that Mr. Cheema's remarks at the port of entry were improperly translated, especially since Mr. Chwritten declaration was translated in Punjabi and since this statement demonstrates his failure to refer to his father's disappearance (Translation of the Declaration; AR, page 105).

[23] Indeed, the respondent observes that Mr. Cheema did not complain before the Board that the translation was wrong.

[24] Mr. Cheema did not meet his burden of establishing that the Board erred in a way that would require the Court to intervene.

VIII. Conclusion

[25] Even if Mr. Cheema does not agree with the finding that the Board made based on the evidence, he did not establish that the Board erred in law or based its decision on erroneous findings of fact made in a perverse or capricious manner or without regard for the evidence.

[26] In view of the foregoing, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that:

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-718-08

STYLE OF CAUSE: HARPREET SINGH CHEEMA
v. MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 2, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATE OF REASONS: September 9, 2008

APPEARANCES:

Denise Fernet FOR THE APPLICANT

Mario Blanchard FOR THE RESPONDENT

SOLICITORS OF RECORD:

DENISE FERNET, Avocate FOR THE APPLICANT
Montréal, Quebec

JOHN H. SIMS, QC FOR THE RESPONDENT
Deputy Attorney General of Canada