

Date: 20081003

Docket: IMM-4608-07

Citation: 2008 FC 1110

Ottawa, Ontario, October 3, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MAYA DEVI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Maya Devi is an 80 year old citizen of India. She claimed Refugee status on the basis of a well-founded fear of persecution at the hands of Sadhu Singh, who resides in her village in India, by reason of her membership in a social group.

[2] The Applicant's husband died in December 2002. Maya Devi then began looking after the family's land that had been leased to Sadhu Singh. After the death of her husband, Mr. Singh stopped paying rent on the land and Maya Devi went to see him with the lease agreement to obtain the rent payments. She claims that Mr. Singh tore up the agreement. She then went to the police

but they did not assist her; neither did her sons, allegedly because they were afraid. Stones were thrown at her home and she received threatening phone calls. She left India and arrived in Canada on a visitor's visa on September 10, 2003, to live with her son. She made her claim for refugee protection on April 21, 2006.

[3] The Panel member in dismissing her claim found that there was no nexus between the persecution she claimed to have suffered in India and the Convention grounds as her persecution was based on her unwillingness to give up the land or seek a judicial remedy, rather than on her gender. The member also found that the Applicant was not credible on the basis of implausibility in her story: that her family in India would not help her in this dispute, that she made no effort to get back this land which she felt strongly was ancestral land, and that Mr. Singh had not bothered any of her putative heirs. Lastly, the member found that the Applicant had not rebutted the presumption of state protection or shown that it would be unduly harsh for her to find an internal flight alternative by moving to live with one of her sons in India. The member noted that Maya Devi had arrived in Canada on a visitor's visa, which was exhausted several times before she sought protection and thus the RPD found that her claim for refugee protection was motivated by a desire to live in Canada with her son, rather than any real fear she had in returning to India.

ISSUES

[4] The Applicant in her written memorandum and in oral submissions raised a number of issues as follows:

- (a) Whether the Refugee Protection Division erred in the manner it conducted the hearing;
- (b) Whether the Refugee Protection Division erred in its credibility findings;
- (c) Whether the Refugee Protection Division erred in its findings on state protection;
- (d) Whether the Refugee Protection Division erred in its findings of an internal flight alternative;
- (e) Whether the Refugee Protection Division erred in finding a lack of subjective fear on the basis of the Applicant's immigration history; and
- (f) Whether the Refugee Protection Division was biased.

ANALYSIS

Did the Refugee Protection Division err in how the hearing was conducted?

[5] The Applicant was represented at the hearing by a paralegal specializing in immigration law. The Applicant's health had been problematic and previous hearings adjourned to accommodate her. She was not well enough to attend the hearing on August 2, 2007 and her son, Devraj Dhoot attended as her Designated Representative and was the only person who gave evidence.

[6] The Applicant submits that the RPD failed to discharge its obligation to ensure that she was provided with a fair and reasonable opportunity to put her case before it and failed to call her to give evidence or cross-examine her. It was submitted that she would have been available to be reached

by phone and that the Board ought to have contacted her during the hearing if it had concerns regarding her story.

[7] The Certified Tribunal Record indicates that the Applicant's representative by letter of July 31, 2007, proposed that the Applicant's son attend the hearing on his mother's behalf. It was asserted that he "is aware of the circumstances surrounding his mother's refugee claim and is fully prepared to answer all questions concerning his mother's refugee claim" (my emphasis). By letter dated August 1, 2007, the Applicant provided the RPD with her written consent to her son representing her at the hearing.

[8] At the commencement of the hearing the Member outlined with care the responsibilities of a designated representative prior to designating him as the Applicant's representative. In short, every care was taken by the RPD to ensure that the Applicant's interests were protected and that she was well represented at the hearing.

[9] There is nothing in the transcript of the proceedings before the RPD to indicate that the RPD was ever informed that the Applicant was available by telephone, if required. More importantly, neither her representative nor her designated representative ever suggested to the Member that it would be appropriate to have her interviewed by phone. There was nothing either inappropriate or contrary to law in the manner in which the RPD conducted the hearing. Further, having proposed this manner of conducting the proceeding in the first instance, it does not now lie in the mouth of the Applicant to object to that process.

Did the Refugee Protection Division err in its credibility findings?

[10] A review of the transcript of the evidence and the reasons of the RPD satisfies me that the negative findings on credibility were reasonable. The Member found that there were a number of aspects of the evidence that lacked plausibility, including that the Applicant's family in India would offer her no assistance either with the immediate problem concerning Mr. Singh or with her business affairs or in having her come to stay with them in light of the culture of the country to look after mothers; that Mr. Singh would only have targeted the Applicant, an old woman, and not her heirs; and that neither the Applicant nor her family would not seek judicial assistance to retrieve her land when it was so important to her. In my view all of these findings were open to the Member on the record before her.

Did the Refugee Protection Division err in its findings on state protection?

[11] The RPD looked at the issue of state protection. There is clear evidence in the PIF and at the hearing that the Applicant approached the local police on one occasion seeking to file a complaint against Mr. Singh. Her evidence was that the local police refused to register her complaint. The Member in the decision, incorrectly, writes that "the claimant made no attempts to go to the police over this issue or to the courts". It is clear on the record is that the Applicant never sought a judicial remedy against Mr. Singh.

[12] While the Member erred in her recitation of the evidence with respect to seeking police assistance, I am of the view that the error is not material to the ultimate determination. One attempt

to lodge a complaint with the local police, in the circumstances at hand, hardly qualifies as a serious attempt to obtain state protection, particularly in a country with significant judicial resources.

Did the Refugee Protection Division err in its findings of an internal flight alternative?

[13] The Member found that the Applicant was a member of a fairly large family in India. She had sons and daughters as well as siblings with whom she could reside. While there was evidence that it was culturally inappropriate for her to reside with her daughters, she had two sons and other relatives living in India. There appears to have been no serious attempt to explore these alternatives when the Applicant was in India or since. The Member's conclusion that this alternative exists for the Applicant cannot be said to be unreasonable on these facts.

Did the Refugee Protection Division err in finding a lack of subjective fear on the basis of the Applicant's immigration history?

[14] The Applicant had attempted to enter Canada prior to her ultimate arrival in September 2003. She made an application on humanitarian and compassionate grounds to make an inland residence application that had been denied before she claimed refugee status almost two and one-half years after her arrival in Canada. In these circumstances, it is not unreasonable to draw a negative inference from the long delay in making a claim for refugee status and the failed H&C application. It is fair to say that persons with a fear of returning to their country of origin typically advance a refugee claim immediately upon arrival or at least within a reasonable time thereafter. The inference the Member drew, in my opinion, was reasonably open to her.

Was the Refugee Protection Division biased?

[15] Aside from the bald assertion of bias advanced by the Applicant, no evidence was offered to support this claim. I have reviewed the transcript of the RPD proceedings and am satisfied that this allegation is without any merit.

CONCLUSION

[16] It is my view that the Applicant was afforded co-operation and courtesy by the RPD. It is further my view that the Member's decision was reasonable and the process followed to reach that decision was fair and in accordance with proper legal principles. Accordingly, this application is dismissed. Neither counsel proposed any question for certification. In my view there is none.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed and no question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4608-07

STYLE OF CAUSE: MAYA DEVI v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 30, 2008

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

DATED: October 3, 2008

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