

Federal Court



Cour fédérale

Date: 20090924

Docket: IMM-2841-08

Citation: 2009 FC 958

Ottawa, Ontario, September 24, 2009

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

SINGH, HARDIAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Background

[1] The applicant is a male Sikh who is a citizen of India. In 1998 he first left India for the United Arab Emirates (“UAE”) under a work permit. He claims never to have returned to India out of fear until May of 2005, when he travelled back to his native country to see his ill and dying father.

[2] He subsequently left India for the UAE in October of 2005. He arrived in Canada from the UAE on December 1, 2005 on a temporary travel visa in order to attend a trade show in Toronto. He claimed refugee status a few months later in April of 2006.

[3] After holding hearings on the matter, a Panel of the Refugee Protection Division of the Immigration and Refugee Board rejected the claim in a decision dated May 30, 2008.

[4] The Applicant sought judicial review of this decision before the Federal Court and leave for this purpose was granted by Justice Edmond Blanchard on October 16, 2008.

[5] A judicial review hearing was held before Justice Lemieux on January 14, 2009, but this hearing was interrupted after the presentation of the Applicant's arguments which raised entirely new issues which had not been previously raised. Justice Lemieux allowed counsel for the Minister to present supplementary arguments of law and fact to answer these new issues, which supplementary arguments were eventually filed with the Court.

[6] I heard the parties on the judicial review on a *de novo* basis in Montreal on September 16, 2009, at which time counsel for the Applicant informed the Court that the new issues which had been raised in the hearing before Justice Lemieux were withdrawn. Consequently counsel for the Minister withdrew her supplementary arguments answering these new issues.

The Decision under Review

[7] The Panel of the Refugee Protection Division of the Immigration and Refugee Board rejected the claim on the basis that the claimant lacked credibility (pages 2 and 7 *in fine* of the Decision: “Credibility was the determinative issue in this claim”; “Based on the foregoing, the claimant was found not to be credible.”).

[8] The claimant had stated that he had been arrested by the police in India and tortured in 1997 as he was suspected of aiding Sikh militants. He claimed he was released from police custody through bribes and thereafter fled to the UAE in January of 1998 to avoid persecution. He stated that he never came back to India out of fear until 2005 when he returned to see his sick and dying father. The claimant provided no evidence on these events other than his testimony and two sentences in an affidavit declaration of a Sarpanch which is further referred to below.

[9] A copy of his previous passport could have established that indeed the claimant had never returned to India between 1998 and 2005, thus giving some objective evidence as to his fear of return. When the passport was requested, the claimant stated that it had disappeared, apparently stolen. Though the claimant stated he could provide a photocopy of this passport, this photocopy proved subsequently to be illegible.

[10] After returning to India on May 3, 2005, the claimant stated that the police raided his home, arrested him, interrogated him, and tortured him alleging that he had taken training in Pakistan and was in India to disturb the August 15th independence day celebrations. Though faced with such

serious allegations, the claimant offered no evidence to the police that he had been in the UAE during this time and not in Pakistan.

[11] Again the claimant seems to have escaped the police even though such serious allegations were being made against him. In fact, he remained in India until October of 2005, well over three months after his father had died on June 12, 2005. The Panel found such a delay in leaving the country completely at odds with the claimant's story. If indeed the claimant's life or personal security was in danger, if he was suspected of having trained in Pakistan and of being in India for disruptive purposes, if he was the subject of arrest and torture as well as death threats, the Panel asked why he had not left earlier at the first opportunity. His answer was that he had to take care of family affairs following the death of his father. This answer was found not credible by the Panel.

[12] The claimant had not indicated in his original Personal Information Form any displacements or harassments of his family since his departure from India in October of 2005. He subsequently modified this claim prior to the hearing to add that family members were being harassed by the police to such an extent as to require their displacement from their village. The Panel found that the claimant could provide no specifics or details or dates related to these alleged harassments, and offered no independent confirmation beyond his own testimony.

[13] Furthermore the claimant stated he had no problems leaving India in October of 2005 even though he was subjected to the routine security inspections at the airport. The Panel found this fact seriously affected the credibility of the claimant since he had stated that he had been arrested at least

three times prior to his departure, had been fingerprinted and photographed and told not to leave the country.

[14] After reviewing further the testimony of the claimant and noting numerous additional inconsistencies and implausible statements, the Panel commented on the third party evidence the claimant had provided to bolster his claim.

[15] The claimant had submitted a Sarpanch affidavit in support of his claim. The Panel found that the concerned Sarpanch affidavit lacked in specifics. As well, the Panel noted that the affidavit was marked with the notice “India non judicial” and “Valid outside India” and consequently held that in its view this affidavit had no legal value inside India and could not thus hold legal value in Canada. In conclusion the Panel found the affidavit evidence “not credible” (at page 7 of the Decision).

[16] Furthermore, the claimant adduced a medical report in support of his alleged arrests on May 5, 2005 and September 10, 2005. The Panel found discrepancies between the claimant’s statements as to the nature of his ailments and the treatment received as noted in the report. Consequently the Panel found that the “claimant’s testimony does not corroborate with the letter in a significant manner” (at page 7 of the Decision), thus further undermining the claimant’s credibility.

Issues

[17] At the hearing on the judicial review, counsel for the Applicant raised three issues:

- a. The Panel did not properly assess the credibility of the claimant and consequently erred in its decision;
- b. The Panel erred in disregarding the Sarpanch affidavit in support of the claim;
- c. The Panel erred in disregarding the medical reports since it holds no expertise in medical matters and should have thus accepted these reports at face value.

[18] The Court notes that in regard to the medical reports, the Panel did not disregard these documents. It rather placed little probative value on these reports in light of the discrepancies between the claimant's statements as to the nature of his ailments and the treatment received and these medical reports. Consequently the third issue raised by the Applicant is nothing more than a simple variant of the first issue relating to the assessment of the credibility of the Applicant himself.

[19] As concerns the Sarpanch affidavit, though the Panel stated in its decision that this document did not have legal force in either India or Canada (an issue on which I offer no opinion), the decision of the Panel to disregard this evidence was fundamentally based on the lack of specific details found in the affidavit itself.

[20] Consequently, I am of the view that the sole issue at stake in this judicial review concerns the assessment of the credibility of the evidence presented by the claimant, and particularly the assessment of the claimant's credibility.

Analysis

[21] It is trite law that factual findings of administrative tribunals must not be disturbed on judicial review save exceptional circumstances. This Court must not revisit the facts or weigh the evidence (see among other *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at para. 51 and 53: “Where the question is one of fact, discretion or policy, deference will usually apply automatically.”; *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, at para. 46: “More generally it is clear from s. 18.1(4)(d) that Parliament intended administrative fact finding to command a high degree of deference.”

[22] This standard of review has consistently been held to apply to decisions of the Refugee Protection Division of the Immigration and Refugee Board concerning findings of fact or of credibility in the context of refugee claim determinations: *Aguebor v. Canada (Minister of Employment and Immigration)*, 160 N.R. 315, [1993] F.C.J. no. 732 (F.C.A.), at para. 4; *M.S.M. v. Canada (Minister of Employment and Immigration)*, 2005 FC 147, [2005] F.C.J. no. 165, at para. 14 (Lemieux J.).

[23] After having reviewed carefully the Decision of the Panel, the transcript of the hearing and the documents comprising the file before the Refugee Protection Division, I find the decision of the Panel “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” (*Dunsmuir v. New Brunswick*, *supra* at para. 47; *Canada (Citizenship and Immigration) v. Khosa*, *supra* at para. 59).

[24] Indeed the Panel took great care to review the testimony of the claimant and the evidence he presented. It expressed clearly and cogently the reasons for which it found the claimant not credible and for which the claim could not be sustained. It is not appropriate for this Court to intervene in such circumstances since this decision clearly falls within possible acceptable outcomes and is defensible in respect of both the facts and the law.

Conclusion

[25] Consequently the application for judicial review is denied.

Certification

[26] No certified question was proposed and none is warranted in this case.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

“Robert M. Mainville”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
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