

Federal Court



Cour fédérale

Date: 20110722

Docket: IMM-7456-10

Citation: 2011 FC 925

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 22, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

AMANDEEP KAUR

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This judicial review raises four issues frequently considered in claims for refugee protection in Canada, namely:

- a. Is the applicant credible?
- b. Considering the facts to be true, is the applicant a United Nations Convention refugee or a person in need of international protection?

- c. Can the applicant count on state protection in her country of origin?
- d. Can the applicant avail herself of an internal flight alternative in her country of origin?

[2] This is an application for judicial review of a decision of a member of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB), dated November 23, 2010, in which the member found that the applicant was neither a Convention refugee nor a person in need of protection. Ms. Kaur is a young Sikh woman who lived in the Punjab, in India. She allegedly made a donation to two women linked to the Guru Asra Trust. The police subsequently contacted the applicant to discuss the donation and asked her to testify that the two women had extorted money from her, which she refused to do. As a result, using coercive persuasion, the police attempted to intimidate her and to extract a false confession from her. Ms. Kaur was allegedly tortured and abused by the police. The panel did not find the applicant to be credible.

[3] Counsel for the applicant seriously called into question the panel's finding that Ms. Kaur was not credible. The RPD member allegedly argued that the applicant had been targeted by the police because of her donation, while the real reason for the police's harassment of her was the police wanting her to provide a false testimony, which she refused to do.

[4] To further bolster the general non-credibility finding, the member relied on a microscopic examination of peripheral matters and clearly erred on certain points. He stated that a certain

document was not dated even though it was. He suggested that the applicant had travelled a great deal even though that was not the case.

[5] If the member had found that the applicant was credible, he might have reached the conclusion that she had reason to fear being persecuted or even tortured.

[6] The member also found that the applicant had not rebutted the presumption of the availability of state protection, despite the fact that the police itself was responsible for the persecution and even the torture. I do not have to rule on the issue of state protection since the panel's decision on the availability of an internal flight alternative is reasonable.

[7] In any event, the member found that Ms. Kaur had an internal flight alternative in Delhi, Mumbai and Calcutta. When she was asked why she would not be able to live in one of the three internal flight alternatives proposed, she gave as the sole reason the fact that the police would be able to find her regardless of where she lived in India. The member found that there was no evidence to support the applicant's claim that she is afraid of being persecuted in such a manner. The local police, or the national police, would have to willing and, indeed, able to do so. The applicant gave no explanation to justify why the proposed flight alternatives were unsuitable. The record shows that there are over 500,000 Sikhs living in Delhi. Moreover, the *India: UK Border Agency Country of Origin Information Report*, issued in January 2010, states that Sikhs can move freely in India, that there are no checks at the various crossing points, even if people are arriving from the Punjab, and that the local police do not have the necessary resources or language skills required to carry out such checks.

[8] The member ruled as follows:

The panel finds that the claimant has an internal flight alternative in any of the cities mentioned above should she return to India and it would be reasonable for her to do so.

[9] I find the member's ruling to be reasonable and separate from the question of the applicant's credibility. It should therefore not be interfered with by this Court. The availability of an internal flight alternative is determinative (see *Sarker v Canada (Minister of Citizenship and Immigration)*, 2005 FC 353, at paragraph 5).

ORDER

FOR THE REASONS GIVEN;

THE COURT ORDERS that the application for judicial review be dismissed. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7456-10

STYLE OF CAUSE: KAUR v MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: July 13, 2011

**REASONS FOR ORDER
AND ORDER BY:** HARRINGTON J.

DATED: July 22, 2011

APPEARANCES:

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