

Federal Court



Cour fédérale

Date: 20111020

Docket: IMM-948-11

Citation: 2011 FC 1200

Ottawa, Ontario, October 20, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

DALWINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Dalwinder Singh left India in 2008 and claimed refugee protection in Canada based on his fear of the Indian police. He claims the police targeted him after he intervened on behalf of a fellow villager who was in police custody.

[2] A panel of the Immigration and Refugee Board dismissed Mr. Singh's claim because he had failed to show a nexus to any ground recognized in the Refugee Convention, lacked credibility, and could live safely elsewhere in India (referred to as an internal flight alternative, or IFA). He argues that the Board erred in all three of these areas. He asks me to overturn its decision and order a new hearing before a different panel.

[3] In my view, the Board reasonably concluded that Mr. Singh had an IFA in India, namely, in Chennai or Calcutta. Given this conclusion, it is unnecessary to consider the other issues raised by Mr. Singh.

[4] The sole issue, therefore, is whether the Board reasonably concluded that Mr. Singh had an IFA in India.

II. Factual Background

[5] Mr. Singh said he went to his local police station to deliver some vehicle ownership papers with his neighbours, Kulwant Singh and Dalbir Singh. At the station, he saw the police beating a fellow villager, Baldev Singh. Baldev asked Mr. Singh to tell his family where he was and what was happening. After informing Baldev's family, Kulwant, Dalbir and Mr. Singh, with others, returned to the police station to secure Baldev's release. The police initially denied that Baldev was detained there, but then said he would be released the next day after they had finished their investigation.

[6] The next day, Baldev's family was told that he had been released the night before. However, they could not find him and a community meeting was called to discuss what to do. Two lawyers at the meeting asked Mr. Singh, as well as Kulwant and Dalbir, what they had seen at the police station. They intended to write to the authorities to investigate the incident.

[7] On April 23, 2008, Mr. Singh, Kulwant and Dalbir were summoned to the police station in connection with Baldev's disappearance. While Mr. Singh was in detention, the police beat him unconscious and, in order to intimidate him and force him to cooperate, falsely accused him of supporting Sikh terrorists. Mr. Singh was detained for four days and released on the condition that he recant his allegations about Baldev and pay the police 200,000 rupees (about \$4,300). The police also told him to report to the station every month, otherwise he would disappear. Mr. Singh did so, but was forced to pay bribes each month. Shortly thereafter, Mr. Singh left India.

III. The Board's Decision

[8] The RPD stated the correct legal test for an IFA:

1. The Board must be satisfied, on a balance of probabilities, that there is no serious possibility that the claimant will be persecuted in the part of the country where the IFA is believed to exist.
2. Conditions in the part of the country considered to be an IFA must not show that it would be unreasonable in all the circumstances, including those particular to the

claimant, for him or her to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA)).

[9] The Board found that this test was met and that Mr. Singh was, therefore, not entitled to refugee protection. Mr. Singh would not be persecuted in Chennai or Calcutta because he had never been involved in any terrorist activities, was not a militant, had never openly supported Sikh separatists, and was not politically active.

[10] The Board found that the police had harassed Mr. Singh because they wanted money from him, not because they suspected him of being a militant. The documentary evidence showed that local police would not try to locate someone with a low profile such as Mr. Singh elsewhere in India. It would be possible for him to move without being traced.

[11] The Board also found that Sikhs from the Punjab are able to move freely within India. There are no checks on newcomers to any part of India, police do not have the resources to perform background checks, there is no system of registration of citizens, and internal relocation is feasible for persons in whom central authorities are not particularly interested.

[12] Finally, the Board found that it would not be unreasonable for Mr. Singh to relocate to Chennai or Calcutta, both large cosmopolitan cities, given his experience and resourcefulness.

[13] The Board also considered whether Mr. Singh was a person in need of protection under s 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, as amended [*IRPA*]. Because of the available IFAs, his claim also failed on this ground.

IV. Was the Board Reasonable in its Conclusion that Mr. Singh had an IFA?

[14] Mr. Singh submits that the Board erred in its application of both prongs of the IFA test. He points to documentary evidence showing that the Punjab police notify police departments in other parts of India of wanted individuals, and may pursue a suspect anywhere in India. The Board accepted that Baldev Singh, the man Mr. Singh saw at the police station, had been arrested by the Haryana police and taken back to Punjab. Furthermore, Mr. Singh learned after he came to Canada that Kulwant Singh (his fellow witness) was arrested in Rajasthan. Therefore, he feels he would be at risk even if he moved to Calcutta or Chennai.

[15] Regarding the second prong of the IFA test, Mr. Singh submits that he has lived in a village his whole life and has only completed eight years of elementary education. His sole occupation has been as a farmer in his village, and his testimony confirmed that he is unsophisticated. The two IFA locations identified by the Board are large cities in India with diverse populations, and very different climates, cultures and languages. These proposed locations would present serious barriers to his employment prospects. Therefore, the Board's conclusion that he would be able to find work there was unreasonable.

[16] In my view, the Board's finding on the first step was reasonably open to it on the evidence. Although there was evidence that the Punjab police may notify other police departments of wanted individuals, and may pursue people across the country, this was found only to occur only with high-profile militants and terrorists. Mr. Singh was not high-profile, had no political involvement and had not been formally arrested or charged with any crime. Furthermore, police do not perform background checks on newcomers and there is no system of registration of citizens. It was therefore reasonable for the Board to conclude that, although the police had arrested Kulwant and Baldev Singh in neighbouring states, they would not trace Mr. Singh thousands of kilometres across India.

[17] The Board's finding on the second step was also reasonable. Although Mr. Singh submitted that the Board had not considered his personal circumstances, those circumstances – lack of education, lack of sophistication, limited work prospects – are not determinative of an IFA finding. According to the Federal Court of Appeal, an IFA is only unreasonable if there is concrete evidence that the claimant's life and safety would be put at risk there: *Ranganathan v Canada (MCI)*, 2000 CarswellNat 3134 (FCA), at para 15; *Thirunavukkarasu v Canada (MEI)*, 1993 CarswellNat 160 (FCA), at para 14. Mr. Singh's circumstances do not satisfy that burden.

[18] Accordingly, the Board's finding that Mr. Singh had an IFA in India was both reasonable and determinative of his refugee claim and his claim under s 97.

V. Conclusion and Disposition

[19] The Board's conclusion that Mr. Singh had an IFA in India was not unreasonable on the evidence before it. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Convention refugee

Définition de « réfugié »

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

- (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
- (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

- a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
- b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

- (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
- (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
 - (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
 - (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
 - (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

- a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
- b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
 - (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
 - (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
 - (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

ou occasionnés par elles,
(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection

FEDERAL COURT
SOLICITORS OF RECORD

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v
MCI

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**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

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