

Federal Court



Cour fédérale

Date: 20120106

Docket: IMM-2293-11

Citation: 2012 FC 15

Ottawa, Ontario, this 6th day of January 2012

Before: The Honourable Mr. Justice Pinard

BETWEEN:

**MULTANI, Balkar Singh
and
KAUR, Manjit**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] On April 6, 2011, Balkar Singh Multani (the “principal applicant”) and his wife Manjit Kaur (together, the “applicants”) filed the present application for judicial review of the decision of Me Paule Robitaille, a member of the Refugee Protection Division of the Immigration and Refugee Board (the “Board”), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). The Board determined that the applicants were not Convention

refugees or persons in need of protection under sections 96 and 97 of the Act. The Board specifically found that the principal applicant fell under the exclusion of sections F(a) and (c) of Article 1 of the *United Nations Convention Relating to the Status of Refugees* (the “Convention”) for having been complicit in crimes against humanity (section 98 of the Act).

[2] The applicants are citizens of India. The principal applicant was a member of the Center Reserve Police Force (“CRPF”) in India from 1980 to 2005. The applicants claim refugee protection under sections 96 and 97 of the Act because of a fear of persecution by the Indian police, for supposedly being suspected of consorting with Sikh terrorists. Moreover, the principal applicant alleges he fears Sukhdev Singh, an extremist militant. Singh would be after the principal applicant because the latter claims to have made Singh’s wife his common-law wife in order to mother his children, since his wife Manjit is supposedly unable to bear children.

[3] On April 27, 2007, the applicants left India with the help of an agent. After arriving in Canada, they claimed refugee status in Montréal on July 31, 2007.

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[4] In its decision, the Board concluded that the applicants did not qualify for refugee protection under the Act. The principal applicant was excluded by the operation of article 98 of the Act and sections F(a) and (c) of Article 1 of the Convention: there were “serious reasons” to believe he was complicit in the commission of crimes against humanity, crimes of war or acts contrary to the purposes and principles of the United Nations, having been a member of the CRPF, the organization

responsible for the perpetration of those crimes. Moreover, the Board considered the applicants' claim not to be credible, disbelieving the story at the heart of their alleged persecution.

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[5] The applicable standard of review to the Board's decision to exclude the principal applicant from the definition of refugee under sections F(a) and (c) of Article 1 of the Convention is reasonableness (*Ryivuze v. The Minister of Citizenship and Immigration*, 2007 FC 134 at para 15 [*Ryivuze*]); *Harb v. Canada (Minister of Citizenship and Immigration)* (2003), 302 N.R. 178 [*Harb*]).

[6] The Board's application of the test for complicity to the case at hand is a question of fact and law and therefore must be reviewed according to a standard of reasonableness (*Ezokola v. The Minister of Citizenship and Immigration*, 2011 FCA 224 at para 39 [*Ezokola*]; *Bouasla v. The Minister of Citizenship and Immigration*, 2008 FC 930 at para 132). Therefore, the Board's conclusions must fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para 47 [*Dunsmuir*]).

[7] This same standard of reasonableness applies to the Board's findings of fact (*Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339; *Alonso v. The Minister of Citizenship and Immigration*, 2008 FC 683 at para 5; *Harb* at para 14).

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[8] The applicants do not attack the Board's findings of credibility, nor the legal test of personal and knowing participation identified by the Board. The principal applicant admitted at the hearing that the CRPF carried out crimes against humanity and that he was aware of their occurrence. However, he emphasized that he never personally carried out any such crimes. The applicants take the position that the Board's findings of fact do not support a finding of complicity. The issue then turns to whether the Board erred in finding that the principal applicant had the personal and knowing participation necessary to conclude that he collaborated with the CRPF.

[9] The applicants claim that the Board erred in not clearly stating whether it considered the CRPF to be an organization with a limited, brutal purpose. Similarly, the applicants argue that the Board erred in not qualifying the principal applicant's role in the CRPF as that of officer or soldier. Such a determination would be crucial to a complicity analysis. Hence, the Board's silence and the absence of these two findings would constitute a material error warranting the intervention of this Court. Due to these omissions, the Board's decision would be unjustified. Rather, the facts indicate that the principal applicant was merely present and therefore not complicit in the crimes carried out by the CRPF during his membership. Knowledge is also insufficient to apply the exclusion under section 98 of the Act. Thereby, the Board would have further erred in concluding that the principal applicant had the requisite shared common purpose to establish complicity. This conclusion is believed to have been made in complete disregard of the evidence: the principal applicant testified that he protested against these crimes against humanity and would talk to victims.

[10] For his part, the respondent argues that the Board's finding of complicity is reasonable, being supported by the evidence. Moreover, the respondent submits that the qualification of the

CRPF as a limited, brutal organization is not necessary to support a finding of complicity, nor is a specific qualification of the principal applicant's position as that of officer or soldier.

I. Crimes against humanity

[11] In my opinion, the Board did not err in concluding that the principal applicant had the requisite shared common purpose to establish complicity. The Board correctly began its decision by describing the crimes against humanity perpetrated by the CRPF, which the applicants do not deny. The Board provided a summary of the documentary evidence depicting human rights violations and a consistent pattern of violence as part of the CRPF's regular operations during the insurgency in India, contrary to the applicants' view that the Board qualified the CRPF as a legitimate organization which only occasionally carried out crimes against humanity. The Board then explained how the principal applicant collaborated in the commission of these crimes by summarizing the principal applicant's own description of his tasks.

II. Membership in the CRPF

[12] The Board was not required to qualify the CRPF as a limited, brutal organization in order to support a finding of complicity, contrary to the applicants' allegation. Rather, because the Board did not conclude that the CRPF was a limited, brutal organization, it went on to explain how the principal applicant personally and knowingly participated in the commission of crimes against humanity (see *Ramirez v. Canada (Minister of Employment and Immigration) (C.A.)*, [1992] 2 F.C. 306). The Board did not apply a presumption of knowledge and therefore did not have to make a finding as to the specific type of organization the CRPF qualified as.

III. Personal and knowing participation

[13] Moreover, the Board does not solely rely on the principal applicant's presence in Punjab, where the insurgency mostly took place, to support its finding of complicity. This presence is coupled with a shared common purpose in the Board's opinion, which allows for a finding of complicity (*Ramirez* at page 327). The tasks carried out by the principal applicant did not merely constitute passive acquiescence, contrary to the applicants' allegations. The Board summarized the tasks performed by the principal applicant as a constable driver, as described by the latter in his narrative and testimony. Hence, in executing his orders and driving platoons to their destination, patrolling the villages, working at the police station while others were tortured, and assisting his colleagues in "doing their job", the principal applicant was not only present when crimes against humanity took place, but his actions facilitated the commission of such crimes, constituting a form of active support: he admitted assisting colleagues "do their job" (see *Penate v. Canada (Minister of Employment and Immigration)* (T.D.), [1994] 2 F.C. 79 [*Penate*], and *Ryivuze*).

[14] In addition, the principal applicant admitted being aware of the atrocities committed by the CRPF. However, he claimed he could not safely disassociate himself from the organization and protested against the commission of crimes against humanity. The Board rejects these allegations, finding the applicants lack credibility. The applicants did not attack the Board's findings of fact nor credibility, neither in their memorandum nor at the hearing before me. Nonetheless, it should be noted that the Board's factual findings are owed great deference. These findings are reasonable, being explained in the Board's decision and anchored in the evidence before it. Consequently, the Board concluded that the principal applicant never tried to disassociate himself from the CRPF, fighting to be reinstated and only leaving when he retired after 25 years of service. Also, it was

within the Board's power to disbelieve the principal applicant's allegation that he protested against the commission of these crimes and consoled victims. Hence, the Board reasonably concluded that the principal applicant was a member of a persecuting group, the CRPF, aware of the crimes committed by this group, but that he did not try to prevent the occurrence of these crimes, nor did he try to disengage himself. Instead, he actively lent his support by performing tasks which facilitated the commission of crimes against humanity by the CRPF. Therefore, a shared common purpose exists according to the case law, since these crimes were not isolated incidents, but a regular part of the CRPF's operations during the insurgency (*Penate and Ryivuze*). Thereby, the Board reasonably concluded that the principal applicant was complicit, having the requisite shared common purpose, establishing his personal and knowing participation (*Ezokola*).

IV. Factors in establishing complicity

[15] Furthermore, the Board assessed the factors identified in *Ryivuze* to establish complicity and considered them as a whole (*Ezokola*). The principal applicant voluntarily joined an organization, which although not aimed at a limited brutal purpose, regularly carried out crimes against humanity during the insurgency movement in India, this period coinciding with his membership in the CRPF. He admitted knowing of the perpetration of these crimes, and remained in the organization for 25 years until he retired, without ever attempting to leave, but rather fighting to remain a member. The principal applicant's position within the CRPF was accepted, as he defined, as constable driver. The Board did not qualify his position as commander, nor officer, nor consider him to have a leadership position, which is why the Board does not apply any presumption of additional knowledge. Rather, it considered the factors as a whole.

[16] Therefore, contrary to the applicants' allegations, the Board did not merely rely on the principal applicant's knowledge to ground its finding of complicity: the Board reasonably concluded, considering the evidence before it, that the principal applicant had a shared common purpose with the CRPF. The Board's decision is justified and intelligible, falling within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

V. Lack of credibility

[17] The applicants do not attack the Board's findings of fact and credibility, which are at the heart of the decision. Since the Board does not believe the applicants' story, their claim would have been rejected, regardless of whether or not the exclusion under section 98 of the Act applied.

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[18] For the above-mentioned reasons, the application for judicial review is dismissed.

[19] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of the decision of the Immigration and Refugee Board determining that the applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2293-11

STYLE OF CAUSE: MULTANI, Balkar Singh and KAUR, Manjit v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 7, 2011

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

DATED: January 6, 2012

APPEARANCES:

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