

Federal Court



Cour fédérale

**Date: 20120614**

**Docket: IMM-5811-11**

**Citation: 2012 FC 751**

**Ottawa, Ontario, June 14, 2012**

**PRESENT: The Honourable Mr. Justice Boivin**

**BETWEEN:**

**SHRI CHANDRA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated July 18, 2011, which refused the applicant's claim to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant seeks an order setting aside the decision and remitting the matter for redetermination by a differently constituted panel of the Board.

Factual Background

[3] Mr. Shri Chandra (the applicant) is a citizen of India. The applicant states that he fears returning to India as the *Bochasanwasi Shri Akshar Purushottam Swaminarayan Sanstha* (BAPS) may harm or kill him.

[4] The applicant submits that he was duped, along with others, to provide free labour to the BAPS organization in India on the promise of being given an employment opportunity in Canada.

[5] The applicant alleges that the BAPS temple arranged a work visa for him and counselled him to lie to Canadian Immigration authorities. The applicant falsely affirmed to Immigration authorities that he would work in a temple in Toronto as a religious worker (a Mukhia).

[6] On January 18, 2008, the applicant arrived in Toronto, Canada, on a work visa valid for a period of four (4) years.

[7] The applicant alleges that, after arriving in Canada, he learned that he would not be working in the temple but rather in the Sayona food factory affiliated with the BAPS temple, he was forced to hand in his passport and was not permitted to leave the factory. As well, the applicant's working and living conditions were abusive: he worked long hours, the work was difficult and his meagre salary was paid in Indian currency.

[8] In February 2009, the applicant explains that he and another worker, Surendra Prasad, decided to leave the factory and took refuge in a Gurdwara (Sikh temple), located approximately four (4) to five (5) kilometres from the factory. The two then travelled to another Gurdwara temple located in Montreal.

[9] In Montreal, the applicant filed for refugee protection. The applicant was aided by Mr. Daljit Singh, a paralegal and translator. The applicant maintains that Mr. Singh completed the applicant's IMM 5611 form (Certified Tribunal Record, pp 122-129), where he was advised to lie to immigration authorities during his eligibility determination interview on May 4, 2009. The applicant explains that several modifications were made to his IMM 5611 form during the interview and the final version was translated to him by Mr. Haider Nami. The applicant affirms that he signed the declaration without the knowledge that Mr. Nami had not translated the entirety of the document to him. The applicant states that Mr. Singh also completed his Personal Information Form (PIF) for him and the applicant signed the form without any knowledge of its contents.

[10] The applicant explains that once he became aware of the scope of the misrepresentations in his paperwork, he promptly changed counsel, rescinded the falsehoods contained therein and recounted the true grounds of his refugee claim in a new PIF.

[11] Moreover, the applicant states that his wife and children residing in India have been questioned by BAPS employees. To avoid further harassment, his wife and children moved to a different village in 2010.

[12] On February 11, 2011, the applicant and two of his colleagues, Surendra Prasad and Ramdev Saini, filed a Statement of Claim in the Superior Court of Ontario against BAPS and Sayona for unpaid wages, and damages for shock, depression, fear and anxiety.

[13] The applicant's refugee claim was heard by the Board on May 9, 2011.

#### Decision under Review

[14] The Board concluded that the applicant was not a Convention refugee or a person in need of protection as it had concerns regarding the applicant's credibility and it found that an Internal Flight Alternative (IFA) existed.

#### Issues

[15] The Court finds that the issues in the present case are the following:

Did the Board err in its evaluation of

- 1) The applicant's credibility?
- 2) The existence of an IFA in Bombay or Calcutta?

#### Statutory Provisions

[16] The following provisions of the *Immigration and Refugee Protection Act* are applicable in these proceedings:

REFUGEE PROTECTION,  
CONVENTION REFUGEES AND  
PERSONS IN NEED OF  
PROTECTION

Convention refugee

NOTIONS D'ASILE, DE REFUGIE  
ET DE PERSONNE A PROTEGER

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,

(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.

Person in need of protection

**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  
(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

**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) 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.

Personne à protéger

**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) 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

<p>to avail themselves of the protection of that country,</p> <p>(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,</p> <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p> <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p>	<p>protection de ce pays,</p> <p>(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,</p> <p>(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 ou occasionnés par elles,</p> <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats</p>
<p>Person in need of protection</p>	<p>Personne à protéger</p>
<p>(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.</p>	<p>(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.</p>

### Standard of Review

[17] With respect to the Board's credibility findings, it is trite law that such findings are fact-based and are therefore to be reviewed on a reasonableness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190 [*Dunsmuir*]; *Aguebor v Canada (Minister of Employment and Immigration)* (FCA) [1993] FCJ No 732, 160 NR 315; *Owochei v Canada (Minister of Citizenship and Immigration)*, 2012 FC 140 at para 20, [2012] FCJ No 165). As well, such findings are entitled to a high degree of deference. Moreover, the standard of reasonableness also applies to the finding of

an IFA (*De Toro v Canada (Minister of Citizenship and Immigration)*, 2012 FC 245 at para 17, [2012] FCJ No 272).

[18] Thus, “reasonableness” is concerned with the “existence of justification, transparency and intelligibility within the decision-making process” as well as “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above, at para 47).

### Analysis

[19] The Court concludes that this judicial review application must be dismissed for the following reasons.

### Credibility

[20] While the Board found that the applicant’s allegations of being overworked and underpaid and concerning his substandard living conditions to be credible, the Board did not find the applicant to be a reliable witness on the subject of his prospective fear as well as his reasons for seeking refugee protection in Canada. The Board noted the following issues:

- The applicant misrepresented himself as a Mukhia to the Visa Officer although he knew that he could not work in that capacity in Canada. The Board noted that this first lie to Immigration authorities affected the applicant’s credibility;
- The Board concluded that the applicant’s behaviour suggested that he had planned to come to Canada regardless of the circumstances of his employment;
- The Board drew a negative inference from the fact that the applicant lied when he stated that he was illegally detained and linked to militants in India

in his Immigration IMM 5611 form signed on March 4, 2009 and his original PIF signed on April 1, 2009;

- Though the applicant submitted a new PIF on January 17, 2011 wherein he corrected his narrative to reflect his true story, the Board concluded that the applicant's explanation for the false refugee claim was not satisfactory. Specifically, the Board found that the explanation did not clarify why the applicant had been prepared to lie to the Immigration official on March 4, 2009;
- Though the applicant argued that the Board should consider the refugee claims of the four other workers, the Board noted that it is well established in law that a Tribunal is not bound to grant status to one applicant merely because this status was granted to another individual who based his claim on the same facts (even if the claimants are related).

[21] It was reasonable, in these circumstances, for the Board to find that the applicant was not credible and his story was not plausible. As mentioned by the Board, the applicant lied to the Immigration authorities in March 2009 when he filed his refugee claim and he lied again in April 2009 when he signed his PIF. These facts are not contested by the applicant. The Court further observed that the applicant waited two (2) years – which can be considered a considerable delay – before he turned around and amended his PIF in order to tell the true story. The Court reminds that these facts were before the Board.

[22] However, the applicant opines that the Board member failed to consider the central aspect of his claim – human trafficking – despite the fact that the applicant alleged that he was a victim of human trafficking who has taken a stand against the abuse and exploitation that he suffered at the hand of his agent of persecution: the BAPS. The applicant strongly argued that (i) this allegation was mentioned by the applicant; (ii) it is central to the claim and, (iii) it was ignored by the Board as there were no consideration and analysis of this issue in the Board's reasons.



[23] While the applicant is correct in advancing that the information was communicated to the Board (Certified Tribunal Record, pp 371, 375 and 376) and while the Court is of the view that it would perhaps have been preferable for the Board to address this issue directly, the evidence supports the Board's finding and the lack of specific reference to the allegation of human trafficking by the Board is not fatal for the following reasons.

[24] It is clear from the Statement of Claim filed in the Superior Court of Ontario on February 1, 2011, that the claim does not refer to human trafficking. Indeed, the Statement of Claim does not support that contention as the plaintiffs claim for unpaid wages, damages, shock, depression, fear and anxiety (Certified Tribunal Record, p 224). At hearing before the Court, the applicant's arguments failed to convince the Court that paragraph 39 is an "implicit" reference to human trafficking in the sense that it "exposes human trafficking" (Certified Tribunal Record, p 223). The Statement of Claim contains allegations pertaining to unpaid wages and no evidence was provided to the Court confirming the allegations of human trafficking put forth by the applicant.

[25] On that point, a reading of Mr. Chandra's and Mr. Patel's testimony does not support the applicant's arguments and the Board was allowed to reject the inferences drawn by the applicant on this question, as they were speculative in nature (Certified Tribunal Record, pp 457-459) (*Prasad v Canada (Secretary of State)*, [1994] FCJ No 1499).

[26] The Court is also of the view that the documentary evidence does not point to human trafficking as alleged by the applicant. For instance, documents P-12 and P-13 (Certified Tribunal Record, pp 331 and 333) indicate that the BAPS is a large and influential Non-Governmental

Organisations (NGOs) and amongst the top receivers with donations. However, the documentary evidence does not make reference to human trafficking and the applicant's allegations are farfetched as they are not supported by documentary evidence (*Sellan v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381, [2008] FCJ No 1685).

[27] In light of the above, the Board was entitled to use a common-sense approach and to take into account the apparent discrepancies and omissions (*Shahamati v Canada (Minister of Employment and Immigration)* (FCA), [1994] FCJ No 415; *Sheikh v Canada (Minister of Employment and Immigration)* (CA), [1990] 3 FC 238, [1990] FCJ No 604 [*Sheikh*]; *Gill v Canada (Minister of Citizenship and Immigration)*, 2005 FC 34, [2005] FCJ No 58; *Gudino v Canada (Minister of Citizenship and Immigration)*, 2009 FC 457, [2009] FCJ No 560; *Aguebor*, above).

[28] Further, the Supreme Court of Canada in the recent decision *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708, has provided the following guiding principle in the context of judicial review which finds application in the case at bar:

[16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[29] In the present case, the Board's reasons, when read in their context and as a whole, adequately explain the bases of its decision and the Court is of the view that, based on the evidence, the Board's findings are reasonable.

#### Internal Flight Alternative

[30] The Board's finding on an IFA is also reasonable.

[31] As noted above by the Court, although the BAPS is a large organisation, there is no convincing evidence that the applicant "is in the process of exposing lucrative and illegal operation that implicated many senior officials" (Applicant's memorandum, para 89) and that the BAPS has the motivation and the capacity to locate the applicant upon entry into India.

[32] For instance, the Court agrees with the respondent that two (2) phone calls made to the applicant's wife in India do not amount to harassment by the BAPS.

[33] Also, based on the evidence, the Court agrees with the respondent that the Board's findings at paragraph 24 of its decision are reasonable :

If, in fact, BAPS had the motivation to use their powerful connections to find the claimant, they would likely have found him when he was 4-5 kilometres away in the Gurdwara in Toronto, or in Montreal. It is now two years and three months since the claimant left the BAPS temple in Toronto – BAPS has also had ample time to track down his wife who is living a short distance from his former village. BAPS had not harmed his wife or children – they have made a total of two phone calls the claimant is aware of in the last two years and three months. The Tribunal concludes that BAPS does not have the motivation or interest to track the claimant and that he would be able to live safely in Mumbai or Calcutta. Furthermore, if the claimant were to purchase an airline ticket without the assistance of BAPS to Mumbai or Calcutta, given the huge volume of passengers to and from India from all over the world on a daily basis, it is

highly unlikely that BAPS would have the interest or ability to maintain a twenty-four hour tracking system on the claimant. The tribunal concludes that the claimant would be able to safely re-locate in Mumbai or Calcutta.

[Emphasis added]

[34] Finally, at hearing before the Court, the applicant referred to documents listed at pp 386-389 of the Certified Tribunal Record and argued that the Board should have referred to these documents. However, while these documents make reference to the existing corruption of the Indian police and the state apparatus, there is no link or evidence between the said corruption and the BAPS. The argument that the BAPS could induce state agents to act on its behalf again remains speculative.

[35] The applicant thus failed to demonstrate, on a balance of probabilities, that there was a serious possibility of persecution throughout India (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (CA), [1994] 1 FC 589, [1993] FCJ No 1172). The Court is of the view that the Board's findings are reasonable in the sense that they "fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above).

[36] For all of these reasons, and despite able argument by the applicant, the application for judicial review will be dismissed.

[37] The parties have not proposed any questions for certification and none arise.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

- 1) The application is dismissed.
- 2) There is no question for certification.

“Richard Boivin”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

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**STYLE OF CAUSE:** Shri Chandra v MCI

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